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No. 10387

United States
Circuit Court of Appeals
For the Ninth Circuit.

FRIEDRICH WALTER BERGMANN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record
In Two Volumes
VOLUME I
Pages 1 to 363

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division

Rotary Colorprint, 590 Folsom St., San Francisco

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*Page numbering appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States in and for the Southern District of California Central Division

No. 2304-H Civil

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FRIEDRICH WALTER BERGMANN,

Defendant.

COMPLAINT.

The United States of America by Wm. Fleet Palmer, the United States Attorney for the Southern District of California, and James L. Crawford and John Marvin Dean, Assistant United States Attorneys for said District, pursuant to Section 338 of the Nationality Act of 1940, 54 Stat. 1158 (United States Code Title 8, Section 738) alleges:

I.

That the defendant, Friedrich Walter Bergmann, was prior to the 9th day of April, 1937, a native and citizen of The German Reich.

II.

That the said defendant entered the United States on the 13th day of July, 1922, and now resides at 1255 West Seaside, Long Beach, California, within the Southern District of California. [2]

III.

That on the 5th day of November, 1936, the said defendant filed his Petition for Naturalization No. 246-P-52847 in the District Court of the United States for the Southern District of California in which said Petition for Naturalization the said defendant stated that he was attached to the principles of the Constitution of the United States, that it was his intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state and sovereignty, and particularly to The German Reich of which at that time defendant was a subject, and that it was his intention to reside permanently in the United States.

IV.

That thereafter on the 9th day of April, 1937, said defendant took the following oath of allegiance in open court as required by law:

> "I hereby declare on oath that I absolutely and entirely renounce and abjure any allegiance and fidelity to any foreign prince, potentate, state or sovereignty, and particularly to The German Reich of which I have heretofore been a citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies foreign and domestic; that I will bear true faith and allegiance to same; and that I take this obligation freely without any mental reservation or purpose of evasion: So Help Me God.
>
> "In acknowledgment hereof I have hereunto affixed my signature."

V.

On the same date, to-wit, the 9th day of April, 1937, [3] the said District Court for the Southern District of California, relying on the truth and good faith of the representations made by the said defendant in his Petition for Naturalization and on his oath of allegiance, entered its order admitting him to citizenship in the United States, and thereupon certificate of naturalization No. 4262178 was issued to him by the clerk of said Court.

VI.

That all of the representations aforesaid made by the said defendant in his Petition for Naturalization were false and fraudulent in that he was not in fact attached to the principles of the Constitution of the United States at the time of the filing thereof nor during the five years prior thereto; in that he did not in good faith intend to renounce absolutely and forever all allegiance and fidelity to the German Reich, of which he was then a subject, but in fact intended to retain allegiance and fidelity to the said German Reich; and in that he did not in fact intend to reside permanently in the United States.

VII.

That all of the representations aforesaid made by the said defendant in his oath of allegiance were likewise false and fraudulent in that he did not in fact renounce and abjure all allegiance and fidelity to the said, The German Reich; in that he did not in fact intend to support the Constitution and laws

of the United States of America against all enemies foreign and domestic; and in that he did not in fact intend to bear true faith and allegiance to the same, but in fact did intend to remain a subject of The German Reich and to maintain his allegiance thereto.

VIII.

That the said Certificate of Naturalization was procured by the said defendant fraudulently and illegally and for the purpose of obtaining the rights, privileges and the protection of American citizenship without intending to assume the duties thereof, [4] and that said certificate of Naturalization is subject to cancellation.

Wherefore, it is prayed that an order be entered revoking and setting aside the aforesaid decree of naturalization, cancelling the said certificate of naturalization and directing the surrender of said certificate of naturalization to the clerk of this Court; and that the defendant be forever restrained and enjoined from claiming any right, privilege, benefit or advantage whatsoever under said certificate of naturalization; and for such other and further relief as may be proper.

WM. FLEET PALMER,
United States Attorney,
JAMES L. CRAWFORD,
Assistant U. S. Attorney.
JOHN MARVIN DEAN,
Assistant U. S. Attorney,

[Endorsed]: Filed July 3, 1942. [5]

[Title of District Court and Cause.]

ANSWER

Defendant answers plaintiff's Complaint as follows, to-wit:

I.

Answering paragraphs VI, VII and VIII, defendant denies, specifically and generally, each and all of the allegations in said paragraphs contained.

And for a First Further Separate and Distinct Affirmative Defense, Defendant Alleges:

I.

That in the month of January, 1911, defendant departed from Germany accompanied by his brother, Edmund O. Bergmann, who had been appointed defendant's guardian prior to said departure; said guardianship was made necessary by reason of defendant's minority in that defendant was then under the age of eighteen (18) years, to-wit, of the age of seventeen (17) years and ten (10) months. [6]

II.

Defendant's destination was Toronto, Canada, via New York City, at which port defendant arrived on the S. S. Washington on February 11, 1911; from New York City defendant proceeded to Canada where he resided until July, 1922, at which time he departed therefrom; defendant entered the United States via Eastport, Idaho on July 11, 1922; from Eastport defendant went directly to Spokane, Washington where his brother, Charles Bergmann resided;

it was defendant's intention to reside permanently in Spokane, Washington, where defendant's said brother, Charles, was owner of the Siberian-Arctic Fur Company.

III.

During defendant's residence in Canada he resided at the following places therein for the following approximate periods of time, to-wit:

1. 1911-1913. Toronto, Ontario, employed as bookkeeper by Greef-Bredt & Co., an importing and exporting wholesale Dry Goods firm.
2. 1913. At Edmonton, Alberta for approximately four (4) months.
3. 1913-1916. Calgary, Alberta, employed as City Sales Representative for A. B. Cushing Lumber Co.
4. 1917-1920, Edmonton, Alberta. Sales representative for Edmonton Metal Works, Ltd., and Economy Foundry Co., of Portage La Prairie, Manitoba.
5. 1920-1922. Prospected on own account for mineral deposits in northern Alberta and British Columbia.
6. July, 1922. Departed from Winnipeg, Manitoba, for the United States entering the United States via Eastport, Idaho. [7]

IV.

That during defendant's entire residence in Canada as hereinbefore alleged, defendant obeyed the laws of Canada and conducted himself with decency and propriety, and was never charged with nor accused of any violation of law.

V.

That after defendant reached Spokane, Washington, as hereinbefore alleged, defendant resided therein and was employed by his brother, Charles Bergmann until sometime in 1923, when he came to Long Beach, County of Los Angeles, State of California, where he has since continuously resided and made his home, except for the following temporary absences, to-wit:

1. During the month of July, 1929, defendant made a short trip to Mexico as the guest of Mr. and Mrs. Ernest Lindquist; Mr. Lindquist was, and is, a rancher and wholesale nurseryman living in Hemet, California.

2. 1930, 1931 and part of 1932. Two (2) archaeological exploration trips to Hawaii and return, via Wilmington and San Francisco, California.

3. Part of 1932, 1933 and 1934. Two (2) archaeological and ethnological excursions to French Oceania and British Cook Island; that the dates of defendant's departure and re-entry are duly entered in defendant's second passport issued by the German Consulate at Los Angeles, California and which is in the possession of plaintiff, defendant having been required to surrender the said passport to plaintiff during citizenship proceedings which resulted in defendant being granted citizenship by plaintiff in the year 1937. [8]

VI.

That at no time since leaving Germany in 1911 has defendant ever returned to Germany, even for a visit; defendant's sole and only interest in Germany or the German Reich since his departure therefrom in 1911 has been his mother, Flora Adele Bergmann of Dresden, Saxony, Germany, who is now over eighty (80) years of age, and to whose support defendant has contributed until July 17, 1941, at which time he made his last remittance to his mother for her support; since July 17, 1941, defendant has made no remittance whatsoever to his mother; defendant represents to plaintiff and to this Honorable Court that it is his prayer and wish when the present war is ended to return to Germany for a visit with his mother, if she be still alive.

Defendant has no recollection whatsoever of his father who became divorced from his mother, defendant is informed and believes, and therefore alleges upon information and belief, when defendant was four (4) years of age; defendant has no knowledge of his father's people or relatives; so far as defendant knows the only relative defendant has living in Germany, other than his mother, is an aunt on his mother's side, Mrs. Adele Praeger of Torgau, Prussia, and who is now, if alive, well past the age of eighty (80) years; defendant has never corresponded with said person nor ever contributed to her support.

VII.

During all of defendant's residence in the United States he has been a dutiful and law abiding resi-

dent; since becoming an American Citizen defendant has whole-heartedly performed, to the best of his ability, his full duty as such citizen; defendant loves the United States of America and has given his unreserved allegiance thereto, and does still give his allegiance thereto, and will continue to do so until his death; said allegiance on defendant's part is wholehearted, without equivocation, mental reservation, or [9] secret evasion whatsoever; defendant has no allegiance on earth to any government or nation other than the United States of America.

VIII.

Defendant owns no property of any kind, real, personal or mixed, outside of the confines of Los Angeles County, California; defendant's possessions are all within the territorial confines of said county, and nowhere else; among defendant's possession is a Defense Bond, Series E, of the face value of One Thousand Dollars ($1000.00); said bond was purchased by defendant for the sum of Seven Hundred and Fifty Dollars ($750.00) on December 19, 1941; said purchase represented approximately fifteen per cent (15%) of defendant's net income for the year 1941; that it is defendant's purpose and intention, and was his purpose and intention when he made the aforesaid purchase, to devote a like percentage of his net income for such purpose so long as the national need so to do exists.

IX.

Defendant has three (3) extensive archaeological collections and one (1) shell collection acquired on

his trips and excursions as alleged in Paragraph V; the value of said collections is approximately Twelve Thousand Dollars ($12,000.00); the aforesaid three (3) archaeological collections valued at Eleven Thousand Six Hundred Dollars ($11,600.00) were loaned by defendant to the Los Angeles County Museum from 1932 to March 17, 1941, at which time said museum requested defendant to remove them for lack of display space at said museum; that said shell collection valued at Four Hundred Dollars ($400.00) has been loaned to the Sixth District Agricultural Association of California since 1932 and is still on display by said Association, all of said collections were by defendant's last will and testament of January 2, 1942 devised and bequeathed to the Los Angeles County Museum ,the Sixth District Agricultural Association [10] and the City of Long Beach, a municipal corporation.

X.

That in the defendant's last will and testament he further devised and bequeathed the bulk of his estate, to-wit: not less than seventy-five per cent (75%) thereof; to the Long Beach Young Men's Christian Association, the Long Beach Salvation Army, the City of Long Beach, and the Toronto Young Men's Christian Association; defendant is unmarried and it has been, and is defendant's desire that whatever he may have accumulated prior to his death, and be subject to his disposition at the time of his death, shall go in the above proportion to the above-described social agencies and city.

XI.

Defendant has never, since his departure from Germany in 1911 as hereinbefore alleged, subscribed to German magazines or periodicals; defendant has never been affiliated with, belonged to, supported, nor attended German or German-American meetings, lodges, clubs, societies or groups; specifically, defendant never has had, and does not now have, any sympathy for, connection with, nor membership in the German-American Bund or any similar organization; defendant has been, and is, and will continue to be, a true and loyal citizen of the United States of America, anxious, willing, and proud to serve the country of his adoption with all of his time, talents, property, and life.

For a Second Further Separate and Distinct Affirmative Defense, Defendant Alleges:

I.

That defendant has never performed military service for the German Reich, or its predecessors; that one of the principal reasons why defendant left Germany in 1811 was to avoid compulsory military service in the German Army; that defendant has always been opposed to German militaristic policies.

[11]

II.

Defendant is opposed to autocracy and to class rule based upon birth or to governmental rule of any kind based on other than the will of the majority of the people as expressed by free elections;

defendant believes wholeheartedly in the Republic of the United States of America and the principles upon which it was founded, as set forth in the Declaration of Independence, the Constitution of the United States, the Gettysburg Address, and the views of our government as expressed by great Americans.

III.

Defendant respectfully submits that on this earth he has no political allegiance but that of a true American, no country but the United States, no flag but the Stars and Stripes.

IV.

Defendant believes devoutly in the Christian religion; Jesus Christ is to defendant the Son of God and defendant's personal Saviour; in this faith defendant states to this Honorable Court that the statements made in this Answer are wholly and completely true, without reservation, equivocation or mental evasion whatsoever.

WALHFRED JACOBSON
Attorney for Defendant

(Duly Verified.) [12]

(Affidavit of service by mail.)

[Endorsed]: Filed Aug. 17, 1942. [13]

[Title of District Court and Cause.]

OPINION

Appearances:

For the Plaintiff:

Leo V. Silverstein
United States Attorney
James L. Crawford
John Marvin Dean
Assistant U. S. Attorneys

For the Defendant:

Walhfred Jacobson
Fred N. Howser
Long Beach, California [14]

Yankwich, District Judge:

The Government seeks to cancel the certificate of naturalization issued to the defendant, a former citizen of Germany, on April 9, 1937.

As grounds for the cancellation, the Government has alleged, in its Complaint, that the certificate was obtained by fraud. More particularly, it has alleged that, contrary to his representations and to his oath of allegiance, the defendant was,

> "not in fact attached to the principles of the Constitution of the United States at the time of the filing thereof nor during the five years prior thereto; in that he did not in good faith intend to renounce absolutely and forever all allegiance and fidelity to The German Reich,

> of which he was then a subject, but in fact intended to retain allegiance and fidelity to the said German Reich."

and that

> "he did not in fact renounce and abjure all allegiance and fidelity to the said, The German Reich; in that he did not in fact intend to support the Constitution and laws of the United States of America against all enemies foreign and domestic; and in that he did not in fact intend to bear true faith and allegiance to the same, but in fact did intend to remain a subject of The German Reich and to maintain his allegiance thereto."

The defendant has denied these allegations and has protested his loyalty of The Government of the United States.

Has the charge been proved?

Naturalization is a privilege. It is granted only upon strict compliance with the conditions laid down by the Congress. (8 U.S.C.A., Sec. 701 et seq.) As said by the Supreme Court in Luria v. United States, 1913, 231 U.S. 9, 23:

> "These requirements plainly contemplate that the [15] applicant, if admitted, should be a citizen in fact as well as in name—that he should assume and bear the obligations and duties of that status as well as enjoy its rights and privileges. In other words, it was contemplated that his admission should be mutually beneficial to the Government and himself,

> the proof in respect of his established residence, moral character, and attachment to the principles of the Constitution being exacted because of what they promised for the future, rather than for what they told of the past." (See United States v. Beda, 1941, 2 Cir., 458, 459; Samras v. United States, 1942, 2 Cir., 125 F(2) 879, 881)

Thus, in many respects, more is demanded of an alien than of a native-born citizen. A native-born citizen need not be literate to exercise his civil rights, unless the state law so requires. But an alien must know the English language. (8 U.S.C.A., Sec. 704) No matter how well educated he might be in other languages, ignorance of English is a bar to citizenship.

A native-born citizen may be a conscientious objector. An alien, even a woman, who refuses to bear arms, cannot be naturalized. (United States v. Schwimmer, 1929, 279 U.S. 644; United States v. Macintosh, 1931, 283 U. S. 605; United States v. Bland, 1931, 283 U.S. 636; In re Warkentin, 1937, 7 Cir. 93 F(2) 42)

A native-born citizen may be immoral. And, unless he is convicted of a felony, he cannot be denied his civil rights. But an alien must be of good moral character before he can be admitted to citizenship. (8 U.S.C.A. Sec. 707)

More, a native-born citizen may be opposed to the pricniples of our constitutional government. And, unless he actually advocates its overthrow,

by force, he may go unmolested. But an alien must be "attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States". (8 U.S.C.A., Sec., 707) [16]

When, through concealment, a certificate of naturalization is obtained in violation of any of these requirements, there is fraud, for which the certificate may be cancelled. (8 U.S.C.A. Sec. 738; United States v. Ginsberg, 1817, 243 U.S. 274; Maney v. United States, 1928, 278 U. S. 16; United States v. Kramer, 5 Cir., 1919, 262 Fed 395; Schurman v. United States, 9 Cir., 1920, 264 Fed. 917; United States v. Glaser, 7 Cir., 1923, 289 Fed 255; United States v. Woerndle, 1923, 9 Cir. 288 Fed 47; Rowan v. United States, 1927, 9 Cir., 18 F(2) 246; Turlej v. United States, 1929, 8 Cir. 31 F(2) 696)

The spirit of these requirements and of the oath of renunciation and allegiance prescribed by the Congress (8 U.S.C.A., Sec., 735) I have tried to express in addresses delivered at various times to persons about to be naturalized. I repeat a portion of one of them, as reproduced in the press.

> "The oath you are about to take requires the renunciation of allegiance to the country of your birth, and the assumption of a new loyalty to the United States.
>
> "Americanism does not brook a divided allegiance. You are not requires, however, to surrender any religious ideal, nor to give up any of your cultural heritage. American civilization is a composite pattern to which many dif-

ferent racial and national groups have contributed.

"However, loyalty to the United States implies the surrender of whatever there may be in the culture of your country which is contrary to the fundamental ideals of America." * * * * *

"The chief characteristic of American constitutional government is its insistence on the rights of the individual, rights, of which he cannot be deprived by the state. This heritage is embodied in our Bill of Rights.

"Fascism, Nazism, Communism postulate the omnipotence [17] of the state and do not recognize the rights of the individual which may be asserted against it. They are the opposite of what you have been taught about the American government. The oath requires you to defend the Constitution and the laws of the United States against enemies foreign and domestic. This means that you must defend them against political philosophies opposed to them. If, after leaving this courtroom, you attempt to foster these alien philosophies in America, it will show that you do not mean this oath you take before God." (From Los Angeles Times Sunday Magazine, January 21, 1940, page 11)

The facts here must be considered in the light of these principles.

Citizenship once granted, should not be revoked except upon positive proof of fraud. Allowance

must be made for statements, made in the heat of possion. At times, people are "goaded" into making extravagant statements. We must also take into consideration the fact that in and out of Congress, prior to America' entry into the war, most fantastic opinions regarding the European war and of the part the United States should play in the world crisis, were uttered with impunity.

In fact, the most extreme forms of denunciation of everyone from the President down who took a friendly attitude towards Britain occurred in the Congress and the Press. The motives of the German Reich were extolled. Those of Britain and of the United States were denounced. (For some of these utterances, See Time Magazine, Vol XL, No. 20, November 16, 1942, p. 20, Col 1) An otherwise gentle woman poet, advised the United States to accept totalitarianism and ride along on the "wave of the future."

Such dissidence is of the essence of our freedom. We not only allow it. We protect it by constitutional guarantee. (See my recent article, Freedom of the Press in Prospect and Retrospect, 1942, 15 So. Calif. Law Review, 322, 332)

But here we have more than the advocacy of a policy [18] which, later events proved unrealistic and detrimental to the United States. In season and out of season, without provocation, the defendant, both before and after America's entry into the war, has upheld the cause and governmental philosophy of present-day Germany and has berated those of the United States. The two are inconsistent.

One cannot profess or serve both, without disloyalty to one.

To my mind, the facts testified to by the many witnesses who appeared in this case gave expression to the feeling which the defendant himself entertained when, in his statement of facts filed in connection with his application for citizenship, dated November 5, 1936, in answer to the question: "26. If necessary, are you willing to take up arms in defense of this country?", he first wrote "Yes". But after discussing the answer with the Examiner, he caused this reservation to be added: "But will not take up arms in an attack upon Germany". When informed by the Examiner that refusal to bear arms against a particular country may result in a denial of citizenship, he caused the reservation to be deleted. He states that the Examiner left him for about fifteen minutes and that he notified him of his change of attitude when he returned. ("I then and there changed my mind",—to use his own words.)

The fact was not called to my attention when, on April 9, 1937, I acted on the Examiner's recommendation that the defendant be admitted to citizenship. (Note 1)

To refer to oneself as a Nazi when being introduced to a stranger, to give Hitler's salute, "Heil Hitler", on taking leave from non-German speaking persons, to praise Hitler, to identify onself with him by saying "We,—Hitler" will do thus and so, "use gas"), to approve and advocate world dominion by Germany and Japan, to express a de-

sire to return to Germany to fight on her side, and to live there "like a white man", to condone the Japanese Attack on Pearl Harbor ("They had to do it"),—even if we disregard entirely the defendant's profane references to the President of the United States,—evince a disloyalty, which must have been clearly present at the time of naturalization. [19] They constitute fr*ua*d most foul. They cannot be waved aside by attributing them to boastfulness,—as counsel for the defendant have endeavored to do in their cross examination of the Government's witnesses,—or claiming, as the defendant sought to do at the trial, that he was either jesting or his meaning was not understood. For one thing, we are not dealing with an ignorant person who, laboring under limitations of language may utter, in the heat of argument, words which do not express his thoughts clearly. Persons under such deficiency may, at times, cause expletives to take the place of thought. It is almost proverbial that foreigners quite often learn to curse in English long before they learn to speak it. Unfortunately, at times, that is about all they learn.

But the defendant is not in this class. He is a man of good educational background, whose English when spoken or written, is correct, who, while giving an alien intonation, at times, to his words, does not seem to be lacking, at any time, in his felicity to bring English words to his assistance. In fact, even in his volubility, to which witnesses referred repeatedly, and which was quite evident during his examination in court,—he never was at

a loss to find the right and grammatically correct manner of expressing his thought. Nor are we dealing *herewith* isolated outbursts. More than a dozen persons from all walks of life, from humble neighbors to bank executives, have testified to the defendant's constant protestations of allegiance to Germany and to its cause, to the repeatedly unsought, unprovoked, and, often, uncalled-for advocacy of German's ideology and the justification of the war-like means used to impose it on the world.

Most of these incidents were not denied. The defendant merely sought to explain them away. (Note 2) They lead to the conclusion that when the defendant was admitted to citizenship on April 9, 1937, he was not "attached to the principles of the Constitution of the United States and well-disposed to the good order and happiness of the United States." (8 U.S.C.A. Sec. 707) And that he swore falsely when he took the oath of renun- [20] ciation and allegiance. For he bore no fealty to the United States and did not intend to renounce allegiance and fidelity to the German Reich.

> "Loyalty or allegiance is, necessarily, of slow growth; therefore, somewhat involuntarily, not fully subject to the will. Those who lightly, for temporary advantages, undertake to change their allegiance, are liable to overlook the deep-seated nature of this feeling; but the fact that not until afterwards, in times of stress, is it made manifest that the desires, suffered to lie dormant, are stronger for their native than their adopted country, although this fact may

not be fully realized at the time of their naturalization, renders it none the less a legal fraud for the applicant to fail to disclose his true, although latent feeling in such a matter." (Judge Edward E. Cushman, in United States v. Herberger, D.C. Wash. 1921, 272 Fed 278, 291)

(And see: United States v. Tapolcsanyi, 1930 *e* Cir., 40 F(2) 255, 257; United States v. Shapiro, D. C. Cal. 1942. 43 Fed. Sup. 927, 929, 930)

The certificate of naturalization is ordered cancelled. Formal findings and judgment to follow.

Dated this 23rd day of November, 1942.

LEON R. YANKWICH,
United States District Judge.

NOTES TO TEXT

1. As revealing are some of his statements made to an agent of the Federal Bureau of Investigation on May 5, 1942, we reproduce the following:

(1) "I want very much to see this present war over quick. I am disgusted with the white man for getting into this war. The white people should realize that east is east, west is west, north is north and south [21] is south. They should not go beyond their rights. The whites should attend to their own business." * * *

(2) "There must always be a Germany. A country of 80 million people has a right to have land enough to sustain them. The colonies she once possessed were nothing but bar-

ren and desert land with the possible exception of German East Africa." * * *

(3) "I didn't join in as much as I don't believe in German Clubs and the like. ∧ ~~It is not that I'm not proud of being a German~~. ∧ I am proud of ~~being~~ a German. It is a great country. Germany is one of the nations that has had world wide admiration for science and commerce. ~~are not asleep, German people are wonderful. During the the last war every one fought for our Fatherland, I came to~~ this country to better myself."

because I'm an American citizen. However, having been FWB

In these connected passages there crops out the familiar German and Japanese justification of their ruthless aggression. In the first, we have the Japanese cry of "Asia for Asiatics" and the defense of the Japanese war aims as brought on by the white man's aggression.

"I am disgusted with the white man for getting into this war", might well have been written by a Japanese apologist for "The new order in East Asia". (See, Wilfrid Fleisher, Volcanic Isle, 1941, especially Chapter 11, pp. 320 et seq)

No amount of rationalization can change this statement, made six months after the United States was forced into war by a treacherous attack against it by Japan, into the mere expression of an idealistic disappointment in the failure of the Caucasian nations to take proper measure, at the end of the

last war, to avoid its repetition, as the defendant sought to do at the trial.

In the second excerpt, we have the all-too-familiar statement of Germany's plea for colonies, the Lebensraum theory, which advocates and defends conquest, on the plea of pressure of population on a "have-not" nation.

Hitler expressed these thoughts in an address to German workers on the meaning of this war. [22]

> "It is a struggle of two worlds.
>
> Forty-six million English rule and govern a total territory of roughly 40,000,000 square kilometers in this world.
>
> Forty-five million Italians have an area of utilizable land of hardly half a million square kilometers.
>
> Eighty-five million Germans have a living space of Hardly 600,000 square kilometers, and this only through their own initiative.
>
> Man living not on phrases, not on declarations, not even on Weltanschauungen, he lives on what the earth yields him through his labor in the form of foodstuffs and raw materials.
>
> Just as internally developing tensions between rich and poor must be balanced, thus the life of the peoples one cannot claim everything and leave nothing to others.
>
> They say: 'We English, we Americans, we French, are the "haves", and whoever "has not" must be satisfied with not having.' To some, I was the representative of the 'have

nots'." (Quoted in Gustave Stolper; This Age of Fable, 1942, p. 171)

The last passage is given, both in the form in which it was reproduced by the agent after conference with the defendant and as it read after the defendant edited it. Standing alone, it might perhaps be considered mere boastful pride of ancestry, but taken with the other statements, with the plea for help to Germany after the war, ("All American citizens have a duty after the war to help Germany"), they exhibit an exultation in a misunderstood and unconquerable Germany, which does not spell loyalty to the United States. "There must always be a Germany", is more than mere braggadocio. The defendant's verbal protestations of loyalty to the ideals of the United States sound hollow when compared with such warm-hearted defense of Germany and all its deeds.

2. Their force is not overcome by the testimony of witnesses produced by the defendant, that, in their presence, he uttered loyal sentiments or that he was thrifty ("miserly", as one of his [23] witnesses characterized him in a deposition), hard working, eager to accumulate money, proud of his financial success, and satisfied with the community, (Long Beach, California), in which he had achieved it. A good portion of this testimony was purely negative. Much stress was laid on the fact that, at various times, the defendant had stated that he would leave some of his possessions, such as an archaeological collection of South Sea materials,

to some public body, and others to the Salvation Army and the Y.M.C.A. which had befriended him when in need. Unexecuted or promised philanthropy ("charitable intention", as the defendant called it) is not necessarily a badge of loyalty.

[Endorsed]: Filed Nov. 23, 1942. [24]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled matter having come on regularly for trial without a jury on the 17th day of November, 1942, in the courtroom of the Honorable Leon R. Yankwich, United States Post Office and Court House Building, Los Angeles, California, the plaintiff having appeared and having been represented by Leo V. Silverstein, United States Attorney for the Southern District of California, and John Marvin Dean, Assistant United States Attorney for said district, and the defendant having appeared and having been represented by Walhfred Jacobson and Fred N. Howser, attorneys at law, the court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

I.

That the defendant Friedrich Walter Bergmann was born in Waldo, Saxony, Germany, on March 6, 1893.

II.

That the defendant entered the United States on the 13th day of July, 1922. [25]

III.

That on the 5th day of November, 1936, the defendant filed his Petition for Naturalization No. 246-P-52847 in the District Court of the United States, for the Southern District of California, in which petition the defendant stated that he was attached to the principles of the Constitution of the United States, that it was his intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state and sovereignty, and particularly to The German Reich, of which at that time defendant was a subject, and that it was his intention to reside permantly in the United States.

IV.

That on the 9th day of April, 1937, the defendand took the following oath of allegiance, as required by law, in the United States District Court for the Southern District of California:

> "I hereby declare on oath that I absolutely and entirely renounce and abjure and allegiance and fidelity to any foreign prince, potentate, state or sovereignty, and particularly to The German Reich of which I have heretofore been a citizen; that I wil support and defend the Constitution and laws of the United States of America against all enemies foreign

and domestic; that I will bear true faith and allegiance to same; and that I take this obligation freely without any mental reservation or purpose of evasion: So Help Me God.

"In acknowledgment hereof I have hereunto affixed by signature." [26]

V.

That on the 9th day of April, 1937, the United States District Court, for the Southern District of California, entered its order admitting the defendant to citizenship in the United States; that thereupon Certificate of Naturalization No. 4262178 was issued to him by the clerk of said court.

VI.

That the representations made by the said defendant in his petition for naturalization that he was attached to the principles of the Constitution of the United States at the time of the filing of the petition were false and fraudulent, in that the defendant was not in fact attached to the principles of the Constitution of the United States.

VII.

That the representations made by the defendant in his petition for naturalization at the time of the filing thereof that he intended to renounce absolutely and forever all allegiance and fidelity to The German Reich were false and fraudulent, in that the defendant did not intend to renounce absolutely and forever all allegiance and fidelity to The German Reich.

VIII.

That the representations made by the defendant in his oath of allegiance that he intended to renounce and abjure all allegiance and fidelity to The German Reich were false and fraudulent, in that he did not in fact intend to renounce and abjure all allegiance and fidelity to The German Reich.

IX.

That the representations made by the defendant in his oath of allegiance that he intended to support the Constitution and laws of the United States of America against all enemies, foreign and domestic, were false and fraudulent, in that he did not intend to support the Constitution and laws of the United States [27] of America against all enemies foreign and domestic.

X.

That the representations made by the defendant in his oath of allegiance that the oath was taken without any mental reservation or purpose of evasion was false and fraudulent, in that defendant took said oath with mental reservations and with the purpose of evasion.

CONCLUSIONS OF LAW

That Certificate of Naturalization No. 4262178 was procured by the said defendant fraudulently and illegally and for the purpose of obtaining the rights, privileges, benefits and protection of American citizenship without intending to assume the duties thereof.

Dated this 28th day of November, 1942.

LEON R. YANKWICH
United States District Judge

Approved as to form as provided by Rule 8:

WALHFRED JACOBSON
By FRED N. HOWSER
Attorneys for Defendant.
Nov. 27, 1942

[Endorsed]: Filed Nov. 30, 1942. [28]

In the District Court of the United States in and for the Southern District of California, Central Division

No. 2304-H Civil

UNITED STATES OF AMERICA,
Plaintiff,

vs.

FRIEDRICH WALTER BERGMANN,
Defendant.

DECREE OF CANCELLATION

This cause having come on regularly for trial on the 17th day of November 1942, and the court having made and entered its findings of fact and conclusions of law herein,

It Is Ordered, Adjudged and Decreed that the order of the United States District Court, for the Southern District of California, made and entered

on the 9th day of April, 1937, admitting the defendant herein Friedrich Walter Bergmann, to citizenship in the United States of America, and the Certificate of Naturalization, No. 4262178, issued pursuant thereto are, and each of them is, hereby set aside and declared null and void and ordered canceled, and the defendant is hereby ordered to deliver to the Clerk of this court said Certificate of Naturalization for cancellation and the clerk of this court will accordingly cancel of record the said Certificate of Naturalization.

It Is Further Ordered that the defendant be and he is hereby forever restrained and enjoined from setting up or claim- [29] ing any rights, priviliges, benefits or advantages whatsoever under said decree of naturalization hereby ordered canceled.

It Is Further Ordered That a Certified copy of this decree be sent by registered mail to the said defendant, in care of Walhfred Jacobson, 612 Jergins Trust Building, Long Beach, California, one of the attorneys for defendant.

Dated: November 28th, 1942.

LEON R. YANKWICH
United States District Judge

Approved as to form as provided by Rule 8:

WALHFRED JACOBSON
By FRED N. HOWSER
Attorneys for Defendant.

Judgment entered Nov. 30, 1942. Docketed No. 30, 1942 CO Book 12 Page 620. Edmund L. Smith, Clerk, Louis J. Somers, Deputy.

[Endorsed]: Filed Nov. 30, 1942. [30]

NOTICE OF APPEAL

To Edmund L. Smith, Clerk of the United States District Court, Southern District of California:

Notice is hereby given that Friedrich Walter Bergmann, defendant above-named, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit, from that certain Decree of Cancellation which was entered on the 30th day of November, 1942, in Civil Order Book No. 12 at page 620.

Dated: February 19, 1942.

WALHFRED JACOBSON
Attorney for Defendant.

[Endorsed]: Filed Feb. 19, 1943. [31]

[Title of District Court and Cause.]

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY ON APPEAL

To Edmund L. Smith, Clerk of the United States District Court, Southern District of California:

The appellant intends to rely on the following points in the above-entitled appeal:

I.

That the District Court erred in holding as a matter of law that defendant was guilty of fraud through concealment in obtaining his certificate of naturalization, the evidence being conclusively that

defendant made a full and frank disclosure to the naturalization officers.

II.

That the District Court erred in holding as a matter of fact that defendant was guilty of concealing his state of mind, the evidence conclusively showing an entire absence of concealment on the part of defendant. [32]

III.

That the District Court erred in holding that defendant upheld the cause and governmental philosophies of Germany.

IV.

That the District Court erred in attributing to defendant, a man of ordinary education, profound philosophical ideologies and geo-political concepts upon the basis of defendant's statements that the world admired German science and commerce and that he was disappointed at the failure of the Caucasion nations after the last war to create a world order along league of nation's ideas.

V.

That the District Court erred in holding that defendant refused to bear arms against Germany.

VI.

That the District Court erred in holding that the Court was not fully informed of defendant's answers to questions in his naturalization application, the testimony of a government witness being

that the Court had personally questioned defendant prior to the granting of citizenship to defendant.

VII.

That the District Court erred in holding that defendant was not in fact attached to the principles of the Constitution of the United States.

VIII.

That the District Court erred in holding that defendant swore falsely when he took the oath of renunciation and allegiance.

IX.

That the District Court erred in holding that defendant repeatedly protested his allegiance to Germany.

X.

That the District Court erred in not granting defendant's motion for dismissal after the conclusion of the plaintiff's case [33] in chief.

XI.

That the District Court erred in not making findings on defendant's First and Second affirmative defenses.

XII.

That the District Court erred in holding that Certificate of Naturalization No. 4262178 was subject to cancellation and in ordering said certificate cancelled.

XIII.

That the findings and conclusions of law and decree of cancellation are not supported by a preponderance of the evidence.

XIV.

That defendant was prevented from receiving a fair trial by many circumstances of a prejudicial nature. One such circumstances was that the Court which heard the case had theretofore granted defendant's petition for naturalization and, in doing so, had apparently overlooked certain matters contained in defendant's petition and which matters the Court held established defendant's alleged fraud. Another such circumstance was the identifying of defendant's testimony with speeches and writings of German leaders, with which speeches and writings defendant was not familiar. Another circumstance was the general atmosphere of prejudice toward a person of German descent accused, during war times, of disloyalty to the United States. This condition affected the Court, though probably not consciously.

Dated: February 19, 1943.

WALHFRED JACOBSON
Attorney Defendant.

[Endorsed]: Filed Feb. 19, 1943. [34]

[Title of District Court and Cause.]

STIPULATION THAT CLERK MAY SEND EXHIBITS TO CIRCUIT COURT OF APPEALS

It Is Hereby Stipulated by and between Leo V. Silverstein, United States Attorney, attorney for plaintiff, and Walhfred Jacobson, attorney for defendant, that the Exhibits on file in the above-entitled action may be sent to the Circuit Court of Appeals, Ninth Circuit, in lieu of copies thereof.

Dated: February 19, 1943.

LEO V. SILVERSTEIN,
United States Attorney
JAMES L. CRAWFORD,
JOHN MARVIN DEAN,
Assistant United States Attorneys
By JOHN MARVIN DEAN,
Attorney for Plaintiff
WALHFRED JACOBSON,
Attorney for Defendant

It Is So Ordered. 2/18/1943.

J. F. T. O'CONNOR,
Judge.

[Endorsed]: Filed Feb. 19, 1943. [35]

[Title of District Court and Cause.]

ORDER PERMITTING SUBSTITUTION OF PHOTOSTATIC COPY OF EXHIBIT

Good cause appearing therefor,

It Is Ordered that a photostatic copy of Government's Exhibit No. 4 in the above case may be substituted for the original in the files of the Clerk of this Court.

Dated this 23rd day of December, 1942.

LEON R. YANKWICH,
United States District Judge

Rec'd original Exhibit 4.

JOHN MARVIN DEAN
12-22-42

Photostatic copy Received 12-29-42.

JOHN A. CHILDRESS

[Endorsed]: Filed Dec. 23, 1942. [36]

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD ON APPEAL

To Edmund L. Smith, Clerk of the United States District Court, Southern District of California.

You are hereby requested to include in the record on appeal the complete record and all the proceedings and evidence in this action, including specifically the following papers:

1. Complaint.
2. Answer.
3. Reporter's Transcript of Evidence, including, all exhibits of plaintiff and defendant.
4. Opinion.
5. Findings of Fact and Conclusions of Law.
6. Decree of Cancellation.
7. Notice of Appeal.
8. Clerk's Certificate.
9. Statement of Points and Authorities on which [37] appellant intends to rely on appeal.
10. Designation of Contents of Record on Appeal.

Dated: February 19, 1943.

WAHLFRED JACOBSON
Attorney for Defendant

Received copy of the within Designation of Contents of Record on Appeal this 19 day of February, 1943.

JOHN MARVIN DEAN
Asst. U. S. Attorney
Attorney for Plaintiff

[Endorsed]: Filed Feb. 19, 1943. [38]

[Title of District Court and Cause.]

CASH BOND ON APPEAL

To Edmund L. Smith, Clerk of the United States District Court, Southern District of California.

Whereas the defendant in the above-entitled action has appealed to the Circuit Court of Appeal of the United States of America, Ninth Circuit, from a judgment or decree which was entered on the 30th day of November, 1942, in Civil Order Book No. 12 at page 620, now, therefore

I, Lucile Geiselman, do hereby deposit with you the sum of Two Hundred and Fifty Dollars ($250.00) in lawful money of the United States, and I do undertake and promise to plaintiff on the part of defendant that the said defendant will pay all such damages and costs as may be levied or assessed against defendant, if the appeal is dismissed, or said judgment or decree is affirmed or modified, not exceeding the sum of Two Hundred and Fifty Dollars ($250.00) in which amount I acknowledge myself bound. [39]

Dated: February 19, 1943.

LUCILE GEISELMAN
1063 Crescent Heights Blvd.,
Los Angeles, California.

(Duly verified.)

[Endorsed]: Filed Feb. 19, 1943. [40]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, hereby certify that the foregoing pages

numbered from 1 to 41 inclusive contain full, true and correct copies of: Complaint; Answer; Opinion; Findings of Fact and Conclusions of Law; Decree of Cancellation; Notice of Appeal; Statement of Points on which Appellant Intends to Rely on Appeal; Stiplation and Order that Clerk may send Exhibits to Circuit Court of Appeals; Order Permitting Substitution of Photostatic Copy of Exhibit; Designation of Contents of Record on Appeal and Cost Bond on Appeal which, together with original Reporters' Transcript and original Exhibits transmitted herewith, constitute the record on appeal to the Circuit Court of Appeals for the Ninth Circuit.

I further certify that the fees of the Clerk for comparing, correcting and certifying the foregoing record amount to $8.55 which amount has been paid to me by Appellant.

Witness my hand and the Seal of said District Court this 11 day of March, A. D., 1943.

[Seal] EDMUND L. SMITH,
Clerk
By THEODORE HOCKE,
Deputy Clerk.

[Title of District Court and Cause.]

Before The Honorable Leon R. Yankwich

Appearances:

For the Government:

Leo V. Silverstein,
United States Attorney; and
James L. Crawford,
Assistant United States Attorney; and
John Marvin Dean,
Assistant United States Attorney.

For the Defendant:

Wahlfred Jacobson, Esq.,
517 Jergins Trust Building,
Long Beach, California; and
Fred N. Howser, Esq.,
Jergins Trust Building,
Long Beach, California.

Los Angeles, California,
November 17, 1942.
10:00 A. M.

The Court: Are there any ex parte matters?
(No response.)

Calendar matters.

The Clerk: No. 2304 Civil, United States of America v. Friedrich Walter Bergmann for trial.

Mr. Dean: The Government is ready, your Honor.

Mr. Jacobson: At this time I ask leave to associate with me Fred N. Howser for the defendant.

The Court: All right.

Mr. Dean: May I make a brief opening statement, your Honor?

The Court: Yes.

Mr. Dean: Because of the peculiar nature of this case, your Honor, I feel it is appropriate for a very brief opening statement to be made by the Government.

The defendant, of course, is charged with fraud in obtaining his American citizenship. The basis for the Government's contention of fraud is that he reserved allegiance to The German Reich at the time the oath of citizenship was taken. Not only that, but at the time the oath was taken, it was the intention of the defendant to return to Germany to live permanenly.

It is the contention of the Government that this is not a case in which mere casual statements have been made, state- [2*] ments made in the heat of passion or made casually in taverns or barber shops, statements which perhaps upon calm reflection would have been regretted by the defendant.

As has been indicated in the pre-trial memorandum, the Government's case will consist largely of testimony of witnesses who, over a period of years, have observed the conduct and heard the utterances of the defendant; and it is our contention that this will clearly show at the time the oath of allegiance

*Page numbering appearing at top of page of original Reporter's Transcript.

was taken, that mental reservations were present and the defendant in fact owed allegiance to The German Reich.

The Court: All right, Mr. Jacobson.

Mr. Jacobson: I do not care to make an opening statement, your Honor.

The Court: All right.

Mr. Dean: Mr. Williams, will you take the stand, please?

ERNEST C. WILLIAMS

called as a witness by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: Ernest C. Williams.

Direct Examination

By Mr. Dean:

Q. Mr. Williams, what is your full name?

A. Ernest Conklin Williams.

Q. And your occupation? [3]

A. I work for the Los Angeles County Museum.

Q. You live in Los Angeles, do you?

A. I do.

Q. Do you know the defendant Friedrich Walter Bergman, Mr. Williams?

A. I have seen him. I can't say I know him.

Q. Will you tell us what the nature of your acquaintance is, if any?

(Testimony of Ernest C. Williams.)

A. I was one of two that helped deliver a collection that belonged to Mr. Bergmann, to his home in Long Beach from the museum.

Q. What was that collection? What did it consist of?

A. Well, as far as I know, South Sea Island material, I didn't see it.

Q. What was the approximate date of the delivery of the collection?

A. About April, 1941.

Q. April of 1941? A. Yes.

Q. Mr. Williams, I am going to ask you to talk a little louder so counsel for the defendant can hear you. A. Yes, sir.

Q. Directing your attention to April of 1941 and to the occasion which you just related, did you have a conversation with the defendant?

A. I did. [4]

Q. Who was present during that conversation?

A. The defendant and Mr. Shields who was with me, and later another acquaintance of Mr. Bergmann.

Q. What time of day did it take place?

A. Approximately from noon on.

Q. Where?

A. At Mr. Bergmann's auto court in Long Beach.

Q. Will you relate what that conversation was as best you can recall it?

A. Well, Mr. Bergman seemed to be very——

Q. Just a moment, Mr. Williams. I don't want

(Testimony of Ernest C. Williams.)

you to indicate what he seemed to be. Just tell us the substance of the conversation as best you can recall it.

A. Well, he attacked the administration; Roosevelt particularly.

Q. What did he say about the administration and Mr. Roosevelt?

A. Well—(pause)

The Court: How did the thing start? What brought it up? You were about to do some business. What brought on the conversation? That would be more important than saying, "He attacked Mr. Roosevelt."

The Witness: It is very hard right now to say just how the conversation started. We talked about Mr. Bergmann's collection, how he got it, where he got it; and naturally, the interest at the time was on the war and Mr. Bergmann [5] started in with an attack upon the administration, saying he didn't like Mr. Roosevelt, he didn't like the Jewish influence in the administration, and matters like that.

Q. By Mr. Dean: Did you have any conversation with Mr. Bergmann concerning photographs?

A. Yes, we did. During the conversation Mr. Bergmann stated that he had seen a photograph of a British warship which was then in New York Harbor and which had been damaged. He claimed to have seen this photograph which had been given to him by the German consul in Los Angeles. He described the damage to the vessel, which side it

(Testimony of Ernest C. Williams.)

was on, and the approximate amount of the damage.

Q. Did you have any conversation with him concerning the first World War?

A. Yes, we did.

Q. Will you tell us what that conversation was?

A. Mr. Bergmann said he had been a German soldier in the first World War, that he had served in Turkey on a gun crew, and described conditions generally in the Turkish campaign.

Q. Did he have any conversation with you at this time concerning his brother or one who is referred to as his brother?

A. Yes. He claimed to have had a brother in the services of the Reich who he said was a submarine instructor who had been sent to Japan as such. [6]

Q. Did you have any conversation with him at this time concerning Adolf Hitler?

A. Yes. Mr. Bergmann professed to admire Hitler very much, his practices and principles.

Q. Did you have any conversation——

The Court: Just a moment. What did he say? That is more important.

The Witness: Hitler was a very great man and that his principles were very fine.

Q. By Mr. Dean: Do you recall anything else that was said concerning that?

A. No, not now.

Q. Did you have any conversation with him concerning the Nazis?

(Testimony of Ernest C. Williams.)

A. Yes. He professed to admire the Nazi principles, and after Mr. Shields and I had finished storing his collection, he stepped back and gave the Nazi salute.

Q. Did he say anything at the time he gave the Nazi salute? A. "Heil Hitler."

Q. Did Mr. Bergmann say anything to you at this time about his political beliefs or affiliations?

A. No, not as such. He professed to admire the United States but still attacked the Government and I could not reconcile those two statements.

Q. Do you recall anything else that was said about the [7] Nazis at this time?

A. No, I don't.

Mr. Dean: I think that is all of the direct examination, your Honor.

The Court: Cross-examine.

Cross Examination

By Mr. Jacobson:

Q. Mr. Williams, this conversation occurred prior, of course, to the entry of the United States into the war? A. Yes, it did.

Q. Did you see the picture of the British boat?

A. No.

Q. Do you recall Mr. Bergman giving you the name of the German consul? A. No.

Q. Now, Mr. Bergmann did express admiration for the principles of the United States?

A. I wouldn't call it "admiration for the principles." He said the United States was a great country. As I recall, he did not go beyond that.

(Testimony of Ernest C. Williams.)

In my testimony I said I could not reconcile the two statements, his professed love for Hitler and his attack on Mr. Roosevelt and his professing of love for the United States.

Q. What did he say about President Roosevelt specifically?

A. I don't think I am prepared to give you any definite [8] statement that was made that far back.

Q. Is it your impression at this time, approximately a year and a half later, that his criticism of President Roosevelt was in the nature of differences of opinion with President Roosevelt's policies or views?

A. Yes, I think it could be constructed as such.

Q. Was any discussion had about what his beliefs were in the way of being either an isolationist or an interventionist?

A. Only this: Mr. Bergmann made a statement as to what would happen to Britain if the United States intervened in the war.

Q. What did he say would happen to Great Britain?

A. He said Great Britain would be gassed within 24 hours.

Q. That was in April of 1941. Is that right? Is that when you had the conversation; in April of '41? A. Yes.

Q. What were you doing; returning his collection?

A. Returning his collection. That is right.

(Testimony of Ernest C. Williams.)

Q. And you delivered it, I suppose, in trucks to Long Beach? A. In one truck.

Q. Was that the first time you had met Mr. Bergmann? A. That is right.

Q. You hadn't helped him unpack the collection? [9] A. No.

Q. You had been with the museum some length of time prior to 1941?

A. About a year and a half.

Q. I suppose you had seen his collection on display? A. I had seen his collection, yes.

Q. Now, with reference to Mr. Hitler, do you recall how the conversation came up?

A. No, I don't. I don't recall how the conversation started. It started, I suppose, like all conversations do; somebody makes a remark, and somebody else answers it, and the conversation starts.

Q. Had Mr. Bergmann preceded this portion of the conversation by telling you the physical labor he had indulged in in building that place on West Seaside? A. No.

Q. Had he told you how he had hauled dirt in there and filled in this land? A. No.

Q. Had there been a discussion about physical fitness and vigor?

A. Yes, as applied to soldiers in the German Army.

Q. With reference to Mr. Hitler, didn't Mr. Bergmann comment specifically on Hitler's youth program as he understood it?

A. He might have. I don't remember. [10]

(Testimony of Ernest C. Williams.)

Q. Is it possible he told you he liked the idea of his physical development, teaching the boys and girls not to use tobacco, narcotics and alcohol?

A. I don't remember.

Q. Didn't Mr. Bergmann then go on to say that, as to that youth program as he understood it, he was in hearty accord?

A. He might have. I don't recall that.

Q. Did he further state that his idea was that this program of Hitler's would produce a nation of strong, vigorous and healthy boys and girls?

A. Well, his remarks might be construed as that. I wouldn't say definitely.

Q. Does that question strike any response in your memory? A. Not at all.

Q. You didn't make any notes, of course, of the conversation, did you?

A. No. In fact, I kept more or less quiet and listened to the conversation between the other people.

Q. Did anything come up in the conversation that, apparently, Hitler's purposes had been misunderstood by him; that he was simply building an aggressive militaristic army instead of just building health? A. Yes.

Q. Did he say that that had disappointed him or made [11] him wonder at Hitler's purposes?

A. Not as I recall.

Q. You do not? A. No.

Q. It did come up, however, those two phases of the conversation, namely, that he understood

(Testimony of Ernest C. Williams.)

Mr. Hitler was trying to build a nation of strong, vigorous boys and girls——

A. I believe so.

Q. ——and then that later it seemed that recent developments had indicated Mr. Hitler was really concerned not so much with strong youth as he was with strong soldiers?

A. I wouldn't go into details on the conversation that far. I really wouldn't know.

Q. I suppose this conversation took place while you were unloading and stacking these goods?

A. That is right.

Q. How were these goods packed? I mean, were they in big boxes?

A. Yes, in large packing boxes.

Q. Very large? A. Yes.

Q. Where did you pack them away?

A. He had a vacant store room or a small garage. I forget what his use for the little building was.

Q. That place you refer to as "Mr. Bergmann's auto [12] court," there are several small apartments and garages facing Seaside Boulevard which in turn face the Pacific Ocean?

A. That is right.

Q. Now, with reference to the first World War did Mr. Bergmann state how many brothers he had?

A. He might have. I don't remember. I recall only the statement of the one.

Q. Do you recall the name of the brother?

(Testimony of Ernest C. Williams.)

A. I don't think he mentioned it.

Q. At this time do you have any recollection of him mentioning his brother Kurt Bergmann?

A. I don't recall.

Q. Do you have any recollection of him mentioning the name of Edmund Bergmann?

A. No, definitely not.

Q. Do you have any recollection of him stating that one of his brothers had been killed in World War I?

A. He might have. I don't recall it.

Q. Did Mr. Bergmann tell you in the course of this conversation what his rank had supposedly been in the German Army in World War I?

A. I don't think so.

Q. There was conversation, however, about a brother who had been stationed near the Turkish border in World War I as a German soldier?

A. I understood from the conversation that it was Mr. [13] Bergmann who was in Turkey.

Q. Yes; but there was conversation about such a service on the part of either Mr. Bergmann or somebody you were talking about?

A. That is right.

Q. You did not see the photograph of this British ship? A. No.

Q. Now, with reference to this "Heil Hitler," had there been any joking back and forth about German goose stepping or the clicking of heels?

A. Not on my part. Of course, we weren't all together all the time. I couldn't say what went on

(Testimony of Ernest C. Williams.)

when I was in the truck bringing something else out, or somewhere else. I wouldn't say about that. But for my part, no.

Q. There hadn't been any talk like that?

A. Not that I know of.

Q. Did you return this salutation by any kind of gesture yourself? A. No.

Q. Do you recall whether Mr. Bergmann was smiling or laughing at the time he gave this "Heil Hitler" salutation?

A. Oh, he seemed to be very jolly during the whole day.

Q. He was very happy, was he?

A. Oh, yes. [14]

Q. His face wasn't serious and set when he said, "Heil, Hitler," was it?

A. I wouldn't say definitely. He was in front of me at the time, or just in front of me to one side. As I say, this place we were working in was very narrow. We couldn't all get in there at once. So I wouldn't say definitely what the expression was.

Q. But he had been laughing and pleasant and agreeable all afternoon? A. Yes.

Q. I suppose there was some discussion about his collection, was there not?

A. Some little discussion, yes.

Q. Not a great deal?

A. Not a great deal.

Q. The fact of the matter is, it was pretty

(Testimony of Ernest C. Williams.)

hard work unloading that merchandise and unpacking it in the garage.

A. Oh, definitely.

Mr. Jacobson: Just a moment, please.

(Conference between counsel.)

The Court: Did he make the Hitler salute when you were about ready to leave, or while you were talking about things in general?

The Witness: After we had finished storing the material in there. We didn't leave for some time after that.

The Court: What brought it on? [15]

The Witness: I suppose the finish of the job.

The Court: Well, was he taking leave of you, or were you taking leave of him?

The Witness: Well, we expected to leave at that time—the material was stored—but the conversation still kept on for some reason or other after this work was done.

The Court: Did he say it as a parting observation?

The Witness: Well, yes.

The Court: As you were going away?

The Witness: Everything was finished; yes.

The Court: You can't tell whether like the Virginian, he said it with a smile?

The Witness: No, I couldn't.

The Court: Or whether he was serious?

The Witness: No.

The Court: But he was not leaving, going away from you?

(Testimony of Ernest C. Williams.)

The Witness: No.

The Court: I mean when he said that?

The Witness: No.

The Court: Had there been any conversation preceding the time he said that?

The Witness: The conversation was continuous from the time we arrived until we left.

The Court: When did you fellows do any work?

The Witness: We talked most of the time.

The Court: I thought you were unpacking his collection. [16]

The Witness: We did.

The Court: But you made a talk fest out of it?

The Witness: Absolutely.

The Court: Is that correct?

The Witness: Absolutely.

The Court: How long after he gave the Hitler salute and said, "Heil Hitler" did you leave or did he go away?

The Witness: I imagine we stayed an hour and a half.

The Court: You continued to talk?

The Witness: Yes.

The Court: What was his attitude? Did he click his heels?

The Witness: That is right. He gave a typical Nazi salute.

The Court: Such as you have seen in pictures?

The Witness: Yes; that is right.

The Court: What did he do after that? What did he say after that?

(Testimony of Ernest C. Williams.)

The Witness: We kept talking about the general world situation. We put our gear into the truck and just talked until we left.

The Court: Continuously talked?

The Witness: That is right.

The Court: All right.

Mr. Dean: May I ask a question on redirect, your Honor? [17]

The Court: Yes. Have you finished, Mr. Jacobson?

Mr. Jacobson: Yes. Oh, may I ask leave to ask another question?

The Court: Go ahead and finish.

Q. By Mr. Jacobson: I want to ask you, Mr. Williams, do you remember how Mr. Bergmann was dressed? A. (Pause)

Q. I don't mean item for item.

A. He had on an old pair of trousers and no shirt.

Q. And no shirt? A. Yes.

Q. Did he have any shoes?

A. Yes, I think he had shoes on, but I don't recall whether they were sneakers or leather shoes, or what they were.

Q. But he was bare to the waist?

A. Yes.

Q. Were they long pants or just trunks?

A. Pants.

The Court: What time of year was it?

The Witness: It was in April, I believe.

The Court: April?

(Testimony of Ernest C. Williams.)

The Witness: Yes. Anyway, it was warm. We were doing some heavy lifting.

The Court: He was assisting you, was he?

The Witness: Yes. [18]

The Court: All right; go ahead.

Mr. Jacobson: That is all.

Redirect Examination

By Mr. Dean:

Q. Mr. Williams, did you have any conversation with the defendant concerning his affiliation with the Nazi party?

A. Yes, I believe that entered in to it.

Q. What was the conversation as accurately as you can recall it?

A. I believe he claimed to be a member, but I wouldn't say at this time whether that was so or not.

Q. Do you recall anything he did say?

A. No, I wouldn't say that.

Mr. Dean: That is all the redirect examination, your Honor.

The Court: All right; step down, Mr. Williams.

(Witness excused.)

The Court: These witnesses may be excused, gentlemen, so they can go about their business?

Mr. Dean: That is one reason I called Mr. Williams first; so he could return to his business.

The Court: All right; you may go, Mr. Williams.

Call your next witness.

Mr. Dean: Mrs. Pelliter, will you take the stand, please? [19]

LOUISE PELLITER

called as a witness by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: Louise Pelliter, P-e-l-l-i-t-e-r.

Direct Examination

By Mr. Dean:

Q. Mrs. Pelliter, will you tell the Court your full name, please? A. Louise Pelliter.

Q. Where do you live?

A. I live on 7th Street.

Q. In Long Beach? A. Yes, sir.

Q. What is your occupation?

A. Well, I am a hotel owner.

Q. Do you know the defendant Friedrich Walter Bergmann? A. Yes.

Q. How long have you known him?

A. About seven years.

Q. What is the basis of your acquaintance with him? In what way have you known him?

A. Mr. Bergmann has a court down on West Seaside, and I own a hotel on West Seaside. Mine is in the 1400 block.

Q. Directing your attention to the month of

(Testimony of Louise Pelliter.)

April, 1939, did you have a conversation with Mr. Bergmann? [20] A. Yes.

Q. Who was present during that conversation?

A. Well, at different times, of course, I have had many conversations with him, but my brother was present sometimes, and the manager of my hotel at times.

Q. Did you have any conversation with him in April of 1939 concerning a trip to Germany?

A. Mr. Bergmann wanted to lease me one of his courts there, the one he lives in at the present time, because he was going away. He said he was going away to Germany and might be gone two or three years.

Q. Where did that conversation take place?

A. It took place, I would say, out on the boardwalk. He worked in the lot across the street from my hotel.

Q. Who else was present at that time?

A. I don't know who would be present at that time. When I looked at his court——

The Court: That isn't the question. Was anybody else near you listening to the conversation? That is what the question is.

The Witness: He came down to my hotel to see about leasing his court, and at that time my manager was present. The night he came down and talked to me about leasing his court, he wanted me to come up and lease his court.

Q. By Mr. Dean: In order to clear this up, Mrs. Pelliter, at the time Mr. Bergmann told you

(Testimony of Louise Pelliter.)

he was planning [21] to leave for Germany and might be gone for two or three years, was anyone else standing close to you when he made that statement? A. Yes.

Q. Who was it?

A. The manager of my hotel.

Q. What is his name?

A. Mr. Anderson.

Q. Did you have any conversation with Mr. Bergmann concerning United States war bonds?

A. Yes. Mr. Bergmann said——

Q. Just a moment, please.

When did that conversation take place?

A. It took place a few evenings after that up in my hotel apartment.

Q. Would you fix that as about April of 1939?

A. Yes, it was in April.

Q. Who else was present, if anybody, at that time?

A. Well, the manager of my hotel and my brother was present that evening.

Q. Will you tell us to the best of your recollection what that conversation was?

A. Well, the conversation—he told us that United States bonds were not safe and not to buy United States bonds, not to invest any money in them at all.

Q. How did the conversation happen to arise, Mrs. [22] Pelliter?

A. They were talking about investing money. He said he had come to the United States with

(Testimony of Louise Pelliter.)

very little money and he had made a good deal here.

Q. Do you recall anything else concerning the war bonds? Or is that the substance of the conversation?

A. No. We talked quite a little bit on how to invest money and how to make money on the small amount we had.

We asked him if he thought it was—what he thought about buying bonds, and he said his opinion was not to buy them, not to buy United States bonds, that he didn't think they were any good.

Q. Did you at any time have any conversation with Mr. Bergmann concerning the relative intelligence of the German and American people?

A. Yes, I did.

Q. I want to fix the time and place of this conversation. Was this during the same conversation?

A. No, I wouldn't say it was at the same time.

Q. Will you fix the time and place for us?

A. The times Mr. Bergmann came to my house was practically every evening until he showed me his courts.

Q. Every evening during the month of April would you say?

A. During a week. Not every evening, but two or three times during that week we were getting together on the [23] deal of buying his courts.

Q. And it was during this period that the conversation took place? A. Yes.

(Testimony of Louise Pelliter.)

Q. Do you recall anybody else being present during the conversation?

A. These two parties were present during the whole time because they managed the hotel and I lived there, but I wasn't managing at the time. I lived in the hotel, but wasn't managing it.

Q. One of the two parties was Mr. Anderson?

A. Yes, sir, and Mr. Wyatt, my brother.

Q. Will you tell us what the conversation was concerning the relative intelligence of the German and American people?

A. He said he had arrived here with a small amount and had invested in one lot; that he had gradually gone up to high money, and he felt the German people were very intelligent and we didn't know how to make money; that he could make more money than we could because he knew how to do it. And then he offered me money for the hotel, said he had plenty of money to invest.

Q. Was that the substance of the conversation?

A. Well, that was part of it.

Q. Do you recall anything else that pertained to the relative ability or intelligence of the German and American [24] people?

A. Yes. He said the American people didn't have the intelligence that the German people had. He said he respected the German people more.

Q. Did you ever have any conversation with the defendant concerning burial in United States soil?

(Testimony of Louise Pelliter.)

A. Yes. We asked him if he didn't think the United States was a fine place to live in. He said yes, he thought it was a good place to live, but he wouldn't want to be buried here.

Q. Was this the same time as the previous conversation which you have related?

A. Yes, it was during that week. The main visits I had with him was during that week he showed me his courts.

Mr. Dean: I think that is all the direct examination, your Honor.

The Court: All right; cross-examine.

Cross Examination

By Mr. Houser:

Q. Mrs. Pelliter, how long have you resided in the city of ong Beach?

A. About 13, 14 years.

Q. During that period of time you have been engaged entirely in the leasing of properties and renting them out? A. Yes.

Q. And engaging yourself in the hotel business? [25] A. Yes.

Q. Approximately how long have you maintained this hotel you refer to down adjacent to Mr. Bergmann's property?

A. I would say about seven years.

Q. During that period of time did you have occasion to observe him off and on?

A. Yes.

(Testimony of Louise Pelliter.)

Q. And you observed that he has always been there at his property?

A. Well, whenever I saw him he was working in vacant lots and down on the boardwalk.

Q. He always dressed in the same fashion or manner, did he?

A. Well, he had on just little shorts every time I saw him.

Q. He was always naked down to his waist, was he not? A. Yes.

Q. In winter or summer?

A. He didn't wear many clothes. He has on more clothes this morning than whenever I saw him.

The Court: Maybe he is wise.

Q. By Mr. Houser: The fact of the matter is, the people down there have complained about Mr. Bergmann running around with little clothes on?

A. The womenfolk have felt insulted at times.

[26]

Q. That has only been within recent years that, by local ordinances in Long Beach, people were permitted to wear trunks and go without uppers. Isn't that true?

A. I couldn't tell you how long. I mean how long they have been doing that, but he has been doing it ever since I have known him.

Q. Do you recall the approximate date when this present world conflict started?

A. I wouldn't tell you that I know the exact date. I leased the court next door to him in May,

(Testimony of Louise Pelliter.)

and I know it was just before I leased the court, because I wanted to lease his court before that.

Q. The fact of the matter is, Mrs. Pelliter, you did go to Mr. Bergmann and inquire if you could lease his premises? A. No.

Q. You knew that the property was vacant, didn't you? A. Yes.

Q. And that it was furnished with new linens and dishes and silverware?

A. No, I didn't know that until I looked at it. He showed it to me after that.

Q. You have been in the apartment, have you not? A. Yes, after that.

Q. Now, when you did go in the apartment—approximately what time was that? [27]

A. It was around noon.

Q. Was that in April of 1939? A. Yes.

Q. Did the apartments that you observed have furniture in them? Were they furnished?

A. Well, they had furniture in them, but he had it covered up.

Q. The furniture was covered in what manner?

A. Well, the furniture had canvas and stuff like that on it.

Q. And sheets?

A. Yes. It was covered up, and I didn't notice with what.

Q. All the dishes were put away?

A. I didn't notice the dishes. They probably were.

(Testimony of Louise Pelliter.)

Q. How about other furnishings other than the main furniture itself?

A. It was all covered up, all of it.

Q. Now, you say that you live in the same apartment with the manager?

A. No, I did not. My manager had a room in the rear of the apartment and managed the hotel for me. I had an apartment up in front on the second floor.

Q. When Mr. Bergman came to your hotel, where did these conversations take place?

A. Up in my apartment. [28]

Q. On each of these occasions you had your manager as well as some other person there?

A. Yes. The bell rings in my apartment, and until I would retire in the evening, I would keep the bell in my apartment and then shift it over to the manager's room.

Q. You say that in this first conversation which took place in April of 1939 he said he might be gone two or three years?

A. That wasn't the first one. That was the one pertaining to the questions asked. I had talked to Mr. Bergmann many times before that, but that was the one in reference to the question you are asking. That was in April, yes.

Q. But he did tell you that he was going to be gone only two or three years?

A. Well, he made that specification that he might be gone two or three years, and he wanted his apartment in good hands.

(Testimony of Louise Pelliter.)

Q. And you understand then from your conversation that Mr. Bergmann fully intended to return to Long Beach?

Mr. Dean: I object to that, your Honor, on the ground it is immaterial.

The Court: Objection sustained.

Mr. Howser: Did the Court sustain the objection?

The Court: Yes, because it is not the understanding; it is what he said that matters.

Q. By Mr. Howser: Mrs. Pelliter, do you remember in [29] that particular conversation whether or not there was any reference to Mr. Bergmann's mother?

A. Well, I don't remember anything about his mother.

Q. You don't recall any conversation wherein he stated that his mother was in Germany and he intended to visit her? A. No.

Q. Now, you say that there was some discussion about United States war bonds? A. Yes.

Q. Were those war bonds, or were they United States bonds?

A. I couldn't tell you that. He said, "War bonds." Not to invest in United States bonds.

The Court: We can take judicial notice of the fact that the United States was not at war at the time. They were Defense Bonds. They don't even call them War Bonds now. That has not been changed because the authority for issuing antedates the declaration of war.

(Testimony of Louise Pelliter.)

Q. By Mr. Howser: Then, Mrs. Pelliter, the bonds that you discussed at that time were United States bonds?

Mr. Dean: Excuse me just a moment. I am going to object on the grounds it calls for a conclusion as to what they were. I think the conversation is proper, but not the conclusion.

The Court: She has referred to war bonds. She is using the wrong designation, because there were no war bonds at the time. Go ahead. The inquiry is proper. [30]

Q. By Mr. Howser: Mrs. Pelliter, just what was the general discussion you had at that time with him?

A. About what? About the investment of our money?

Q. Yes. A. Just what I said.

Q. You had money to invest, did you?

A. Well, I always had a little.

Q. And you were discussing with Mr. Bergmann what you could put your money in that would give you the quickest and best return?

A. No. He told me what he was putting his money in, and he was advising us to do the same thing.

Q. At that time he told you that, as far as a quick return, and making a great amount of money is concerned, that United States war bonds were not good?

A. No. He advised me not to buy them.

(Testimony of Louise Pelliter.)

Q. Well, can you tell us now just what he said when he advised you that?

A. He said not to buy them.

Q. Did he tell you anything other than that?

A. I don't recall anything else.

The Court: Were you discussing other investments? What other investments were you discussing?

The Witness: Well, we were—the West Side in Long Beach is oil property at the present time but then it didn't amount to so much and I naturally was enthused over my [31] investment down there. I had made a good investment and was enthused over it, and I wanted to buy other property, and he said he was buying all the vacancies he could up there. And then our conversation led to the fact that we felt we would put our money in some kind of bonds, or something like that. We felt it was safer than vacant ground. That was all called shanty town by everybody that knew it. So Mr. Bergmann led up to the fact that he didn't approve of that investment and said so, said he didn't.

The Court: Were you discussing bonds of every character?

The Witness: No, we didn't.

The Court: Interest on bonds?

The Witness: No, we didn't discuss interest at all.

The Court: Well, the question of returns on investments?

The Witness: No, we didn't discuss the returns

(Testimony of Louise Pelliter.)

on investments. We were discussing what was our opinion on the best way to invest money. We suggested something about bonds, and he said not to. He kept telling us not to.

The Court: Did you bring up the conversation about Government bonds——

The Witness: No.

The Court: ——or did you talk about bonds in general?

The Witness: No. We called it "United States bonds" at that time. At that time, as you say, there were no war bonds.

The Court: You called them "United States bonds"?

The Witness: Yes. [32]

The Court: Did he say why he didn't think they were good?

The Witness: He talked about Roosevelt at the time, and he talked about our administration, and he said he didn't think, with the debt we were going into, that they would be good.

The Court: All right; did he mention the fact that they give a very low rate of interest?

The Witness: He didn't mention interest, I don't think, but he said we were going so far in debt that he didn't think they would be good to buy. He said the money that was being invested now in loans and things like that, that he didn't think they were the thing to buy for a good investment.

Q. By Mr. Howser: Mr. Bergmann is a very

(Testimony of Louise Pelliter.)

shrewd operator as far as securities and bonds are concerned, and that is his general reputation in the immediate neighborhood, is it not, Mrs. Pelliter?

Mr. Dean: I object to that on the ground it is immaterial.

The Court: We are not concerned with reputation. The objection will be sustained.

Q. By Mr. Howser: Mrs. Pelliter, did he tell you what to invest your money in?

A. I don't think so. I don't remember that.

Q. That is, from the conversations you had no conclusions were arrived at between you what you would invest your money in? [33]

A. No, I don't think so.

Q. Do you recall whether or not there was any conversation about Mr. Bergmann telling you that he felt the best place you could put your money would be to go out and buy lots that were in that oil lease down there?

A. Well, no, he didn't say, "Buy lots," because I buy property. I buy hotels.

Q. Did he tell you to buy the landowner's royalties that were in the lease?

A. No, he didn't tell me to.

Q. He told you that that was what he was doing to make his money, did he not?

A. No, he didn't tell me he was buying the landowner's royalties at all. He said he had royalties, but he didn't say anything about buying any.

(Testimony of Louise Pelliter.)

Q. Did he tell you he was investing money by buying the property itself?

A. Yes; he said he was buying all the vacants he could down there.

Q. And that that was his idea of making money in investing money?

A. He said the people didn't know the value of the ground he was buying.

Mr. Howser: That is all, your Honor.

Mr. Dean: No redirect examination, your Honor.

The Court: All right, step down. [34]

(Witness excused.)

The Court: Call your next witness.

Mr. Dean: Mr. Huggins, will you take the stand, please?

F. H. HUGGINS

called as a witness by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: F. H. Huggins; H-u-g-g-i-n-s.

Direct Examination

By Mr. Dean:

Q. Will you tell the Court and counsel for the defendant your full name, Mr. Huggins?

A. Fred H. Huggins.

(Testimony of F. H. Huggins.)

Q. Where do you reside, Mr. Huggins?

A. 54 Santa Clara Avenue.

Q. That is in Long Beach? A. Yes.

Q. How long have you resided in Long Beach?

A. Since November 6, 1940.

Q. Since November 6, 1940? A. Yes.

Q. I am going to ask you to speak just as clearly and as loudly as you can so they all can hear you, Mr. Huggins. A. Yes.

Q. Do you know the defendant Freidrich Walter Bergmann? A. Yes, I met him. [35]

Q. When was the first time you met him?

A. Oh, some time in the fore part of '41 or the latter part of '40.

Q. Did you have a conversation with him at the time you first met him?

A. I don't think so.

Q. What is the nature of your acquaintance, Mr. Huggins?

A. Just a passing acquaintance.

Q. It is not a business relationship then?

A. Yes.

Q. Directing your attention to the fall of 1941 did you have a conversation with Mr. Bergmann concerning lend-lease or America sending supplies to Britain? A. Yes, I did.

Q. Where did the conversation take place?

A. Out in his yard.

Q. In his yard? A. Yes.

Q. Where is that located?

A. That is just south of me, the next lot.

(Testimony of F. H. Huggins.)

Q. Who was present at the time of this conversation?

A. Well, there wasn't anyone; just he and I.

Q. What time of day was it? Do you recall?

A. Well, I think it was along about noon, just a little before noon, 11:00 o'clock. [36]

Q. Will you tell us to the best of your recollection what the conversation was?

A. He said he didn't like the way the administration was going. If he knew that the United States was going to furnish England with material, that he didn't know whether he would become a United States citizen or not.

Q. Was there anything else that was said about that time concerning that subject?

A. Well, I don't know whether it was that day or not, but we were talking. He wanted to sell me his courts, and he said——

Q. Excuse me just a moment, Mr. Huggins. Was there anything else said at any time concerning lend-lease or the shipping of supplies to Great Britain by the United States?

A. He condemned that every time he had a chance to.

Q. How many chances did he have? On how many different occasions?

A. At least two or three.

Q. And all about the fall of 1941. Is that right? A. Yes.

Q. Did you have any conversation with Mr. Bergmann concerning the Japanese?

(Testimony of F. H. Huggins.)

A. Yes, he said he would like too——

Q. Excuse me just a moment. When did this take place?

A. That was some time in '41.

Q. Was it close to the time of this first conversation [37] you related?

A. It was probably a month later.

Q. Where did this conversation take place?

A. Well—(pause).

Q. If you recall, Mr. Huggins.

The Court: I think you had better talk louder, Mr. Huggins, so the people over there can hear you.

Q. By Mr. Dean: Now, do you recall my last question to you, Mr. Huggins?

A. I would like to have it read.

Mr. Dean: Would you read it, please, Mr. Reporter?

(The question was read.)

The Witness: Well, I think it was right out near the gate.

Q. I see. A. In the driveway.

Q. Was anyone else present at the time?

A. No, just he and I.

Q. Will you tell us what the conversation was concerning the Japanese?

A. Well, he said he wanted to sell me the property or the lease; that he thought he would like to go and make a visit in Japan; that the people of Japan were very nice people.

(Testimony of F. H. Huggins.)

Q. Now, is that the substance of the conversation? A. That is about it.

Q. Did you have any conversation at any time with the [38] defendant concerning Adolf Hitler?

A. Yes. He said Mr. Hitler was very much——

The Court: Let's get the time now.

Mr. Dean: Yes.

Q. By Mr. Dean: When did this conversation take place concerning Adolf Hitler?

A. Well, I really don't remember the date or any thing.

Q. Can you give us the approximate date?

A. I would say it was along about the last—oh, in June, May or June, that is, in '41.

Q. Now, Mr. Huggins, how far removed from the first conversation which you related was it? Now, I want you to talk loud enough so I can hear you.

A. About how long a time?

Q. Was it close to the time of the first conversation?

A. Oh, it might have been two or three weeks apart.

Q. Who was present during that conversation?

A. There wasn't anyone.

Q. What time of day was it? Do you recall?

A. As I remember, this was along in the afternoon.

Q. Can you fix the—well, I think you have.

Will you tell us now what the conversation was concerning Adolf Hitler?

(Testimony of F. H. Huggins.)

A. Well, he said he thought the American people mis- [39] understood Hitler and that Hitler himself was a very nice man. That is about the sum of it.

Q. Did you have a conversation with Mr. Bergmann at any other time concerning Adolf Hitler?

A. Well, I can't just recall right now.

Q. I see.

Well, did you have any conversation with Mr. Bergmann concerning his political affiliations?

A. He was over at our apartment one day to get some writing paper.

Q. When was this?

A. I can't recall the month, but it was in the fore part of '41. My mother was there and he began to talk to her, after he was introduced, in German, and my mother said, "I can't understand that." And he said, "Maybe French?"

Mother said, "No, just plain American."

He said, "I am a Nazi. I am a Nazi."

Q. Now, did you have any conversation, Mr. Huggins, with the defendant after December 7, 1941? A. Yes.

Q. Where did this conversation take place?

A. While I was passing by. He was standing out there by the driveway to his garages.

Q. Excuse me. But was anyone else present at the time? A. No, sir. [40]

Q. What time of day was it?

A. In the evening.

Q. In the evening? A. Yes.

(Testimony of F. H. Huggins.)

Q. Now, I have said, "After December 7th." Can you fix it a little closer for us? Can you fix the approximate date for us?

A. Well, it was just a few days after that, maybe a week.

Q. Tell us what the conversation was, please.

A. When I went past, he spoke to me, and we got to talking. One word led to another, and I said to him, "Now what do you think of your nice friend, Japan?"

"Well," he said, "they had to do that."

I said, "I don't see why they had to."

Q. Did he say anything else?

A. No; that was all. I went on then.

Mr. Dean: That is all the direct examination, your Honor.

The Court: What else was said? Of course, we all know what happened on December 7th. but we don't know what you and he were talking about.

The Witness: I don't remember just what the conversation was.

The Court: Were you talking about the attack of the Japanese Navy upon Pearl Harbor? [41]

The Witness: There was something said about that, and I said, "Now, what do you think of your Japanese friends?"

"Well," he said, "they had to do that."

The Court: What was he referring to? Do you know?

The Witness: I suppose he was referring to the

(Testimony of F. H. Huggins.)

attack on Pearl Harbor. That is the way I took it, anyway.

The Court: Anything else?

The Witness: No, I went on.

The Court: Did you take exception to it? Let's see; you live right near Mr. Bergmann?

The Witness: Yes, just in the next block, the next lot north.

The Court: Do you have a little——

The Witness: Court there.

The Court: Is there a group of private residences there?

The Witness: No, it is a court, an apartment house.

The Court: You saw him at his court?

The Witness: Yes, as I was coming down the street going home.

The Court: All right.

Mr. Dean: Your Honor, before cross examination, may I ask a five-minute recess?

The Court: All right; we will take a short recess.

(A short recess was taken.)

The Court: Any further questions? [42]

Mr. Dean: No further direct examination.

The Court: Cross-examine.

Cross Examination

By Mr. Jacobson:

Q. Mr. Huggins, your property is just north of Mr. Bergmann's? A. It is.

(Testimony of F. H. Huggins.)

Q. You lease a court, do you not?

A. Yes, sir.

Q. There are, I presume, children living in your court? A. There are.

Q. And have been right along? A. Yes.

Q. Have you and Mr. Bergmann had quite a bit of difficulty over children bothering his property?

A. No, we haven't.

Q. Hasn't he complained to you several times about children bothering him?

A. He has been over a time or two, yes.

Q. Did the Juvenile Department of the city of Long Beach come down one time in 1941 to check up on the theft of some lumber off his property?

A. Not that I know of.

Q. You don't know anything about that?

A. No, sir. [43]

Q. Now, he did offer to lease you his property but the negotiations fell through. Is that right?

A. He wanted to lease it to me.

Q. You made him a counter-offer, didn't you?

A. No, I didn't.

Q. He just proposed the lease, and nothing came of it? A. Nothing came of it.

Q. And you and Mr. Bergmann haven't had much to do with each other, have you?

A. Well, not a great deal, no.

Q. Mr. Bergmann lives very much to himself, does he not?

A. Well, as far as I know.

(Testimony of F. H. Huggins.)

The Court: You are willing to let him, aren't you?

The Witness: Absolutely.

The Court: All right.

Q. By Mr. Jacobson: With reference to this conversation about Japan, do you remember the month in which that happened, that he said he would like to visit Japan?

A. I can't recall the month, but it was some time in '41.

Q. At that time did he say anything more than that they were nice people? Did he express any admiration for the beauty of the country?

A. Not that I remember of. [44]

Q. Was that all the conversation that day; that he said he would like to visit Japan some time?

A. No, he did most of the talking. I don't just remember now all of it.

Q. That is about all you remember at this time?

A. At that one particular time.

Q. In fact, the conversations with Mr. Bergmann were somewhat one-sided as a rule, weren't they?

A. Well, he usually talks most of the time.

Q. Referring to your mother—was that your mother who was visiting you? A. It was.

Q. He was introduced to your mother?

A. My wife introduced him to my mother.

Q. Her name is the same as yours?

A. No. She has been married a second time. Her name is Duell.

(Testimony of F. H. Huggins.)

Q. D-u-e-l-l? A. Yes, that is right.

Q. When Mr. Bergmann was introduced to your mother, he spoke to her in German? A. Yes.

Q. And she said she didn't understand it?

A. She didn't understand that.

Q. Then he said, "Perhaps you are French?"

A. That is right. [45]

Q. And she said she spoke only English or American?

A. She said she was just "plain American."

Q. When Mr. Bergmann made this statement, "I am a Nazi," was he laughing and smiling?

A. Well, he just had a kind of a smile on his face. He said, "I am a Nazi. I am a Nazi."

Q. Was anything further said?

A. Nothing that I remember of right then. I don't recall it, anyway.

Q. Do you remember why Mr. Bergmann came over that day?

A. He came over to get some writing paper. He had some narrow paper like that with him (indicating), and I had a typewritter at the time, and I had some wide paper, and he wanted to trade paper with me.

Q. He wanted to trade his paper for yours?

A. Yes.

Q. Did he succeed in making the trade?

A. I gave him the paper, yes.

Q. How long would you say Mr. Bergmann was there with you, your mother and your wife?

A. Oh, he was there about four or five minutes.

(Testimony of F. H. Huggins.)

Q. It was a very short conversation?

A. Yes, it was.

Q. Did Mr. Bergmann tell you why he wanted the paper?

A. He said something about listing something. I don't [46] remember what it was.

Q. Was there some conversation about the fact he was going to draw up a lease of his property?

A. No, no; it was for listing some of the stuff he had that he was going to send away some place. I don't remember just what it was now, but he said he had to typewrite it down, and he wanted wider paper to make the listing.

Q. Some sort of a list he was planning on making up at that time? A. Yes.

Q. But you don't know what it was now?

A. I don't remember now, no.

Q. There was a conversation after the lend-lease bill was passed? A. Yes, there was.

Q. And you and Mr. Bergmann were the only ones present? A. That is all.

Q. That was out in his front yard——

A. In his front yard.

Q. ——or on the street?

A. It was in his front yard.

Q. Can you give us more of the conversation, about how the subject of lend-lease came up?

A. No, I don't know as though I can. We were just [47] talking along. He was talking about the courts and then it went off into the administration. He didn't approve of it. He said he didn't think

(Testimony of F. H. Huggins.)

that he would have become an American citizen if he had known the Government was going to furnish England with material to fight Germany.

Q. Had he ever expressed his opinion before that as to England to you?

A. He didn't like England.

Q. He didn't like England? A. No.

Q. In fact, he was rather bitter toward England, was he not?

A. He was bitter toward England, yes.

Q. This lend-lease bill provided for material to be loaned or sold, or given to England. Is that right?

A. Well, he didn't say about that. He said he didn't like them to furnish the stuff to fight against Germany.

Q. Of course, that was prior to the United States being involved in the war?

A. Yes, it was.

The Court: Of course, at the time you didn't consider that anything out of the ordinary, did you?

The Witness: Not so much, no; not until after we got into the war.

The Court: You knew there were a lot of people, prominent people, who were opposing lend-lease, and a lot of [48] people like the Irish groups who were basing their opposition on aiding England and talking about the fight between the Irish and the English, on English imperialism? You heard some of the speeches of Senator Wheeler and his son John delivered around in Long Beach about that time, did you not?

(Testimony of F. H. Huggins.)

A. Yes.

The Court: It wasn't anything they weren't advocating, was it?

The Witness: I don't know. I didn't read their speeches.

The Court: You knew at the time there were a lot of American people who were opposing it?

The Witness: Isolationists, yes.

The Court: You knew there were a lot of them in Congress too, didn't you?

The Witness: Oh, yes.

The Court: You knew that the extension of the draft from one year only passed the House by one vote, did you not? And you remember our distinguished Senator from California, Senator Hiram Johnson, voted against it; said the Government had broken faith with the people when it promised the boys it would only keep them one year. In other words, at the time he made this observation, there were a lot of people, native-born and others, who actually felt it wasn't our fight and we had no business helping England; didn't care whether England disappeared from the face of the earth or not. You knew that, didn't you? [49]

The Witness: Oh, yes.

The Court: So his observation was just along the same lines.

Did you ever read some of the Los Angeles newspapers prior to our entry into the war?

The Witness: No; I take the Press-Telegram.

(Testimony of F. H. Huggins.)

The Court: Well, I know the Pierce brothers were not isolationists.

Now, this conversation you had with him when he said, "I am a Nazi"—by the way, does your mother-in-law have a foreign countenance?

The Witness: No.

The Court: She looks typically American?

The Witness: Yes.

The Court: The name Duell sounds rather foreign.

The Witness: He said, "It may be French?"

The Court: He said, "It may be French?"

The Witness: Yes. He thought she might be French.

The Court: It wasn't anything especially, except the man who speaks many languages wants to show up his knowledge. Isn't that right?

The Witness: No; until he said he was a Nazi.

The Court: Did you argue about what the Nazis stand for, or anything like that?

The Witness: No, we didn't.

The Court: He said, "I am a Nazi"? [50]

The Witness: Yes.

The Court: Then you dropped it and went on talking about the paper?

The Witness: No, I just gave him the paper and he went away.

The Court: This other conversation that you say was after Pearl Harbor, all he said was, "Japan had to do it." Is that it?

(Testimony of F. H. Huggins.)

The Witness: That is all. I said, "I don't see why."

The Court: What did he say?

The Witness: Well, I don't remember what he said.

The Court: You don't remember what he said?

The Witness: I just went on because I was going home then.

The Court: You were sort of twitting him about these Japanese people he was talking about. Is that the idea?

The Witness: I didn't like what Japan done, no.

The Court: Nobody else did, either. I mean you just brought it up to remind him of a converversation you had had before. Is that the idea?

The Witness: I don't remember just how that was; whether he brought it up or whether I did.

The Court: You had talked previously to him about Japan, and he said he liked the Japanese people and wanted to go on a visit there?

The Witness: Yes. [51]

The Court: You don't know how many days after December 7th that was, do you?

The Witness: No, not exactly; but it wasn't over a week or so.

The Court: It wasn't over a week or so?

The Witness: No, not over two weeks, I don't think, anyway.

The Court: All right.

Mr. Jacobson: No further questions on cross examination.

(Testimony of F. H. Huggins.)

Mr. Dean: No redirect, your Honor.

The Court: All right; step down, Mr. Huggins.

The Witness: Thank you.

(Witness excused.)

The Court: Call your next witness.

Mr. Dean: Mr. Kennedy, will you take the stand?

URIAH L. KENNEDY

called as a witness by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: Uriah L. Kennedy.

The Clerk: U-r-i-a-h?

The Witness: Yes.

Direct Examination

By Mr. Dean:

Q. Mr. Kennedy, what is your full name, please? [52]

A. Uriah L. Kennedy.

Q. I am going to ask you to speak just as clearly as you can so counsel for Mr. Bergmann can hear you. A. Yes, sir.

Q. Now, what is your address? Where do you live?

A. I live at 4825 East Broadway, Long Beach.

Q. How long have you lived in Long Beach?

A. 22 years.

(Testimony of Uriah L. Kennedy.)

Q. Are you acquainted with the defendant, Friedrich Walter Bergmann? A. I am.

Q. How long have you known him?

A. More than 10 years; perhaps 15; it has been a long time.

Q. What is your occupation, sir?

A. I am assistant building inspector.

Q. For the city of Long Beach?

A. That is right.

Q. Directing your attention to the fall of 1941, did you have a conversation with Mr. Bergmann concerning the length of the war? A. Yes.

Q. Where did the conversation take place?

A. In the office of the Building Department.

Q. Of the City of Long Beach?

A. Of the City of Long Beach. [53]

Q. Who else was present at this conversation?

A. Mr. Vaughn, a plastering inspector for the Department.

Q. What time of day or night was it?

A. I would say perhaps 9:00 o'clock in the morning, just before the inspectors left the office.

Q. Will you tell us what the conversation was and the circumstances surrounding the beginning of the conversation?

A. Mr. Bergmann came in the office, and I think he had left some pamphlets of a speech. It was along about the time of Lindbergh's and Wheeler's speeches. He came in one morning to see if I had read it.

Q. Do you remember what the pamphlet was?

(Testimony of Uriah L. Kennedy.)

A. It was America First.

Q. Published by American First?

A. Yes.

Q. Now, continue, please.

A. So Mr. Vaughn came up to the counter where we were, and we got discussing the war.

First, Mr. Bergmann came to the counter. I met him at the counter, and Mr. Vaughn came up and began discussing the war. I asked Mr. Bergmann when he was going back to Germany. He said, "As soon as the war was over."

I said, "When will the war be over?"

He said, "Well, we don't know, but," he said, "when it comes to the worst," he said, "we—Hitler —will use gas." [54]

Q. Excuse me just a moment, Mr. Kennedy.

A. Yes.

Mr. Dean: Will you read that last statement back, Mr. Reporter? May it be read, your Honor?

The Court: Yes.

(The record was read.)

Q. By Mr. Dean: Now, with reference to that last statement, are those the exact words of Mr. Bergmann? A. That is right.

Q. You are positive of that?

The Court: What is the date of the conversation?

Mr. Dean: It was in the fall of 1941, your Honor.

Q. Can you fix the approximate date?

A. I can't fix the regular date.

(Testimony of Uriah L. Kennedy.)

Q. Let's take December 1st. That is a good starting point. How long before that?

A. Just about the time the American First Committee was having a lot of meetings against the lend-lease bill or the furnishing of aid to England.

Q. When was that?

A. When was that?

I don't know what month it was; shortly before the war.

Q. Would you say it was later than September?

A. It might have been in September or October.

Q. Now, did you have any conversation with him concern- [55] ing the length of time he would stay in Germany?

A. He said, "When I go back, I am going to stay."

Q. Do you recall anything else that was said during that conversation?

A. No, I don't think so.

Mr. Dean: That is all the direct examination, your Honor.

The Court: All right. Go ahead with cross examination.

Cross Examination

By Mr. Jacobson:

Q. Mr. Kennedy, you know Mr. Bergmann real well, don't you? A. I do.

Q. And are familiar with his activities in the district, harbor district? A. Yes.

Q. Over a period of these 15 years you have known him, Mr. Bergmann has been given to rather

(Testimony of Uriah L. Kennedy.)

extremes of, and speaks on almost any subject, does he not?

Mr. Dean: I object to that on the ground it calls for a conclusion as to what the extremes are.

The Court: That is a rather argumentative question, Mr. Jacobson.

Mr. Jacobson: I will withdraw it, your Honor.

The Court: You may put it in a different way. I think it might be material as to whether the man is given to [56] exaggeration, but I mean it should be by examples of speech rather than a general conclusion.

Q. By Mr. Jacobson: Mr. Bergmann, when he speaks, is inclined to speak very loudly, is he not?

A. Mr. Bergmann is very enthusiastic about most things.

Q. Very enthusiastic?

A. Very enthusiastic in his conversation.

Q. And in the period of 15 years that you have known him, have you helped to issue him permits to build?

A. Oh, I wouldn't say "many," but he is in the office a good many times. He is a property owner.

Q. He owns quite a bit of real estate in Long Beach? A. I think so.

Q. And at one time your department was a part of the city engineer? A. That is right.

Q. That has jurisdiction over parks?

A. We don't have the parks.

Q. You don't have it in your department?

A. No.

(Testimony of Uriah L. Kennedy.)

Q. Are you personally acquainted with the property on West Seaside? A. Yes, I am.

Q. Do you know anything about the improvements that Mr. Bergmann made there? [57]

A. Yes.

Q. Have you ever been down there?

A. I have.

Q. Both before and after the improvements?

A. Yes.

Q. Did you observe by what means he filled in the land and graded it? A. Yes, I did.

Q. What did you observe? How did he do it?

A. Well, he went down in what we call "Seaside Park" along the Ocean front. Of course, it was very shaggy at that time. He had some ocean front lots and I understand he floated in some large poles that looked like telephone poles from the ocean, and built sort of a wooden retaining wall around the lots and planted flowers in around them.

Q. He did this labor himself? A. Yes.

Q. You know of your own observation the man is a prodigious worker, don't you?

A. Oh, yes.

Q. Other than this remark he made in the building department in September or October, 1941, about, "We don't know when the war will end. When it comes to that we—Hitler will use gas,"—and you do recall positively he used the word "we"?

A. Yes. [58]

Q. Had there been quite a conversation about

(Testimony of Uriah L. Kennedy.)

the progress of the war in Europe before that remark was made?

A. No, the conversation was before that. We sort of got into it quickly some way.

Q. Were there many conversations about the war after it broke out in Europe sometime, I think, in '38?

A. No, he never discussed the war that I know of with me.

Q. During the 15 years you have known him do you recall any other remark of a similar nature to this made by Mr. Bergmann?

A. As regarding the war?

Q. The war or his citizenship?

The Court: His feelings towards this country.

Q. By Mr. Jacobson: Or his feelings toward the United States?

A. Oh, no, excepting his criticism of the administration.

Q. You are speaking now of the national Government? A. That is right.

Q. Mr. Bergmann was very much out of sympathy with President Roosevelt's policies?

A. I think so, yes.

Q. And he was very much in sympathy with the view expressed by Senator Wheeler, General Wood and Colonel Lindbergh and members of the America First Committee? [59]

A. That is right.

Q. Now, in the 15 years you have known him, did you ever recall Mr. Bergmann telling you that

(Testimony of Uriah L. Kennedy.)

he had been in Federal Court and had been given his citizenship?

A. I didn't know he was a citizen until just a short time before this conversation. I was surprised when he told me, when he said he had been a citizen for two years, but I didn't know it.

Q. You hadn't known it prior to that?

A. No.

Q. Most of the relationship then you have had with Mr. Bergmann has been in connection with real property he has owned and improvements he has made? A. That is right.

Q. And you do know that he has done a great deal toward the improvement of that district in Long Beach, do you not?

A. I would say that he has.

Q. Did Mr. Bergmann ever make any statement to you of any intentions on his part with reference to his property and giving it to the City of Long Beach for public purposes? A. No.

Q. Pardon? A. No.

Q. He never did? A. No. [60]

Mr. Jacobson: I think that is all, your Honor.

Mr. Dean: No redirect examination, your Honor.

The Court: All right; step down, sir. You may be excused, Mr. Kennedy.

(Witness excused.)

Mr. Dean: Mr. Kelgard, will you take the stand, please.

ANKER L. KELGARD,

called as a witness by and on behalf of the Plaintiff, having been first duly sworn, testified as follows:

The Clerk: Your name?

A. Anker L. Kelgard.

Direct Examination

By Mr. Dean:

Q. Will you tell us what your full name is, please? A. Anker L. Kelgard.

Q. Where do you live, Mr. Kelgard?

A. Long Beach, California.

Q. How long have you lived there?

A. 41 years.

Q. Do you know the defendant Friedrich Walter Bergmann? A. I do.

Q. How long have you known Mr. Bergmann?

A. I have known Mr. Bergmann for possibly 15 years.

Q. In a business way? A. Yes. [61]

Q. Now, directing your attention to the latter part of 1939 did you have a conversation with Mr. Bergmann on or about that time concerning the war? A. I did.

Q. Where did the conversation take place?

A. Up in the City Hall in Long Beach.

Q. Who else was present, if anybody?

A. Nobody was present but he and I.

Q. Can you fix that date a little better for us?

A. It is pretty hard to fix the time. As I recall it, it was just before the fall of France.

(Testimony of Anker L. Kelgard.)

Q. Just before the fall of France?

A. That is right.

Q. At that time did you have a conversation with Mr. Bergmann concerning his return to Germany?

A. Yes. He said that he felt like going back to Germany and helping whip England.

Q. Was that the substance of the conversation concerning his return to Germany? A. Yes.

Mr. Dean: That is all the direct examination.

The Court: The fall of France was in the fall of 1940, wasn't it?

The Witness: I believe it was.

The Court: That was right after——

The Witness: This conversation took place, as I recall [62] it, right after that.

The Court: All right.

Cross Examination

By Mr. Howser:

Q. Mr. Kelgard, you say you have known Mr. Bergmann for 15 years?

A. Approximately 15 years more or less.

Q. And this is the only comment that you recall in that 15-year period of time?

A. Well, it is the only comment that I would say would reflect upon himself as a citizen of the country.

The Court: It is in the light of events that have happened since. Isn't that it? You didn't think anything out of the ordinary, a statement of that

(Testimony of Anker L. Kelgard.)

character? There are a lot of people who hate England in this country, aren't there, good American citizens? A. Yes.

The Court: Have you ever listened to addresses before the Ancient Order of Hibernians.

The Witness: No, sir, I haven't.

The Court: Your name is Danish, isn't it?

The Witness: Yes, sir. You are a good guesser.

The Court: Of course, you haven't any love for Germany yourself, have you?

A. Not now, no, sir.

The Court: I see; but before the war, before the [63] United States went to war you knew among your neighbors a lot of people, native born citizens, who took sides one way or the other?

The Witness: Oh, certainly.

The Court: As a matter of fact, Long Beach was a rather hot bed for America First?

The Witness: A lot of them belonged.

The Court: Some of the biggest meetings were held there. John Wheeler presided at one of the biggest meetings there.

The Witness: Yes.

The Court: You remember there was a meeting there where somebody got up and made a speech the other way and John Wheeler came out? John Wheeler at that time was an attorney for one of the Government departments. I think he lost the job after that. John Wheeler was the President's —the would-be President Burton Wheeler's son,

(Testimony of Anker L. Kelgard.)

and Long Beach, despite its growth is still a very neighborly sort of city.

The Witness: Yes.

The Court: It is given over to a lot of talking like in the days of the old horse shoe club?

The Witness: That is right.

The Court: Even public officials stop to visit with the people. They begin to talk about the weather and about what the Mayor is doing, whether to recall this Mayor, as they have recalled a lot of others, and so on. So they are a talkative kind of people in Long Beach, aren't they? [64]

The Witness: Yes.

The Court: And his observation didn't impress you as being any different than what you had heard from the Auditorium speeches by Wheeler, Lindbergh and others, were they?

The Witness: No, I can't say that it was at that time.

The Court: So it is only in the light of later events that it kind of impressed you as showing a rather strong bias the other way?

The Witness: Yes.

I did say this to him during the conversation: I said, "You are a citizen of this country. You have made a lot of money here. You and I were both in the last war and we know what it is all about." I said, "What do you want to go back and get mixed up in that mess for? Why don't you get married and settle down here?"

The Court: That is good advice.

(Testimony of Anker L. Kelgard.)

I see; all right.

You didn't have any conversation with him since December 7th?

The Witness: No, sir.

The Court: I see; all right. Step down.

Mr. Howser: That is all.

The Witness: May I be excused, please?

The Court: Yes. All of you gentlemen, all the witnesses, unless you are retained by request of the Government, will be excused to go about your business. [65]

The Court: Call your next witness.

Mr. Dean: Mrs. Thiessen, will you take the stand, please?

EMMA V. THIESSEN,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, testified as follows:

The Clerk: Please state your name.

The Witness: Emma V. Thiessen, T-h-i-e-s-s-e-n.

Direct Examination

By Mr. Dean:

Q. Mrs. Thiessen, is that the way you pronounce it? A. Yes.

Q. Where do you live? A. Long Beach.

Q. How long have you lived there?

A. Oh, about 28 years.

Q. What is your occupation? A. Realtor.

(Testimony of Emma V. Thiessen.)

Q. Do you know the defendant, Friedrich Walter Bergmann?

A. No. I just met him on one occasion.

Q. When was that occasion?

A. It was in August of '39. I went to look at his property.

Q. What was the reason you went to look at the property?

A. Well, someone told me he wasn't very patriotic [66] and I wanted a court for a friend of mine who wanted to buy one, and I went down to pump him.

Q. You say this was in August of 1939?

A. Yes, in August of '39.

Q. Did you have a conversation with him at that time?

A. Quite a lengthy one. At 2:00 o'clock in the afternoon I met him by appointment.

Q. Who else was present, if any one?

A. My husband.

Q. Will you tell us what the conversation was, Mrs. Thiessen?

A. He said he came over here after the World War was over. He came to Alaska, and he said he had $26 American money when he landed and that he had made a fortune here.

He said he wanted to go back, that he had fought three years in the German Army and he wanted to go back and fight three years more.

Then I asked him—I said, "Mr. Bergmann, if

(Testimony of Emma V. Thiessen.)

you go back there, are you coming back to the United States?''

He said, ''No, I am an archeologist, and I am going on to Egypt (I think he said) and look for lost missions.''

Q. Did you have any other conversation with him?

A. Yes, about the furniture. I asked him why he didn't rent the court. The moths ate all the velour and the overstuffed furniture and the rooms were so run down and I asked him why he didn't rent them and he said he didn't want any- [67] body living around him.

The Court: That sounded kind of queer from a realtor?

The Witness: It certainly did. I didn't know moths could multiply like that.

The Court: I see.

By Mr. Dean:

Q. Did you have any other conversation, Mrs. Thiessen, concerning it?

A. No; that is just about all. That is all I wanted to say to him.

Mr. Dean: I think that is all the direct examination.

Cross Examination

By Mr. Howser:

Q. Mrs. Thiessen, when you went down to see Mr. Bergmann, you had already been advised by some one that he was going to leave?

(Testimony of Emma V. Thiessen.)

A. They just said they didn't think he was a patriotic citizen.

Q. You went down there looking for a person who, in your mind, was odd?

A. I wanted to see his court. I had a buyer for one just like that, yes.

Q. But you did expect to see an individual who was odd in appearance?

A. Well, he had on just shorts and a pair of tennis shoes. I had an appointment with him and I met him, and [68] thought it was very strange for a man to look like that when he had an appointment.

The Court: You haven't been around Palm Springs?

The Witness: No, I never have.

The Court: You thought he should have at least put on a shirt?

The Witness: I have been in this country 59 years and I never met a man like that before.

By Mr. Howser:

Q. You found the man living down there in apparently good health, did you not?

A. I didn't look at him. He was so near nude that I didn't look him over very good. He is quite a nice looking fellow but I didn't like his sentiments.

Q. But you saw a man living alone there?

A. I didn't know who he was living with. He didn't let me see his apartment at all.

Q. Then you——

(Testimony of Emma V. Thiessen.)

A. I saw all the apartments except his.

Q. Then you cannot describe for us the manner or the extent of the furnishings and the way he was living?

A. Not in the apartment he was in, but the others were sure eaten up with moths.

Q. Now, these other apartments, did you go through all of them? A. I did. [69]

Q. Were they all in the same condition?

A. Yes, in a deplorable condition.

Q. Nobody was living in them?

A. No, they were all empty.

Q. And the furniture was covered up, was it?

A. No, it was not covered up. There weren't any covers when I saw it at all. All the velour was eaten off the overstuffed furniture and the carpets looked bad. I didn't think a man looking as smart as he did would let the place get empty. I asked him why and he said he didn't want anybody living around him.

Q. Now, on this——

A. Of course, that was his privilege.

Q. Yes.

This particular vicinity down there, without any reflection on those people, is generally recognized as the lower rental district?

A. Oh, he has a very nice court and it was furnished and it had been originally furnished nicely.

Q. But the district as a whole is a low rental district?

(Testimony of Emma V. Thiessen.)

A. There are some very nice buildings on the west side there. There are some very poor ones, too.

Q. In other words, the 8 and 12 dollar a month property is down there?

A. He has a very nice stucco bungalow. [70]

Q. In other words, Mr. Bergmann has taken a great deal of pride and kept his property up?

A. His yard was nice and clean, yes.

Q. And he has beautiful shrubs and flowers planted around his place?

A. The yard was very neat.

Q. He has the only trees in the whole district around his property, hasn't he?

A. No, I wouldn't say that, but his yard is very neat.

Q. Now, are you a member of any organization or society that sponsors and inspires patriotism?

A. Sponsors what?

Q. Sponsors patriotism?

A. Why, I consider myself a very good American.

The Court: No, no. He wants to know if you are a member of some special organization.

The Witness: No, I am too old. I had sons in the last war and I have two sons now.

The Court: Do you belong to the Auxiliary of the American Legion?

The Witness: No, because I have too much work to do.

(Testimony of Emma V. Thiessen.)

Q. By Mr. Howser: This particular district down there, and immediately adjacent to the property that you observed, is surrounded by oil wells?

A. Yes.

Q. And tanks? [71] A. Yes.

Q. And large concrete structures around the tanks?

A. There are some, but they are according to the city specifications. They have to be that way. You have to have a certain amount of concrete on account of people living in the district.

Q. The Long Beach lumber yards are there, are they not?

A. Oh, the Navy Ball Park was just across the street from him at that time.

Q. And the fish canneries were down there?

A. No, they are way over in Wilmington on the other side.

Q. Oh, the boats come in there and unload, do they not? A. Nothing undesirable, no.

The Court: You can't knock any part of the town to her.

The Witness: No, you can't knock any part of the town to me. I voted for you, so don't you tell me about that.

Q. By Mr. Howser: You learned when you went down there that Mr. Bergmann professed to be an archeologist of some note?

A. Yes, and after he got through in the war—he fought 3 years in the last war and he wanted

(Testimony of Emma V. Thiessen.)

to go over and fight three years more—he was an archeologist. When I asked him whether he was coming back to the United States he said [72] no, he was going to Egypt to look for lost missions.

Q. Mrs. Thiessen, outside of his own declarations that he served in World War I, you have no knowledge on that subject?

A. I never saw him before or since until today.

Q. Whether or not he served in that war you do not know?

A. I took his word for it.

Q. I mean other than his own statement?

A. No.

Q. You have no proof of that?

A. No, I haven't.

Mr. Howser: That is all, your Honor.

Mr. Dean: May I ask one question on redirect, your Honor?

The Court: Yes.

Redirect Examination

By Mr. Dean:

Q. At this time, the time you saw Mr. Bergmann, Mrs. Thiessen, was there quite a demand for property of the sort you visited?

A. Yes, a big demand, and we didn't have any rentals at all. That is why I asked him why he didn't rent his apartment.

Q. Do you know what the cause of that demand was?

A. People coming in for the factories, the work in all [73] the different industries.

(Testimony of Emma V. Thiessen.)

Mr. Dean: That is all.

The Court: I don't think that is material. The man has a right to do as he pleases with his own property.

The Witness: I just couldn't understand the moths eating it up.

The Court: Well, of course, like all thrifty women it is impossible for you to see why property should go to waste.

The Witness: They could have rented it for $35 a month. I am too much of a Jew for that.

The Court: All right.

Mr. Dean: That is all I have.

The Court: Step down.

(Witness excused.)

Mr. Dean: Mr. Posey, will you take the stand?

ALEC R. POSEY,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, testified as follows:

The Clerk: Please state your name.

The Witness: Alec R. Posey.

Direct Examination

Mr. Dean: The witness is a little hard of hearing. May I approach him, your Honor?

The Court: Yes.

(Testimony of Alec R. Posey.)

Q. By Mr. Dean: Mr. Posey, when you answer my ques- [74] tions I want you to face in this general direction, if you will. You don't have to face me. Just talk as clearly as you can.

A. All right.

Q. Your name is Alec R. Posey. Is that correct? A. Yes.

Q. Where do you live, Mr. Posey?

A. Long Beach.

Q. How long have you lived there?

A. 32 years.

Q. What is your business or occupation?

A. Why, nothing in particular right now.

Q. Are you retired? A. Yes.

Q. Do you know the defendant, Friedrich Walter Bergmann? A. Yes, sir.

Q. How long have you known him?

A. Between two and three years.

Q. Now, when was the first time you saw him if you recall?

A. Well, it happened that he was the purchaser of a piece of property that I had lived in for a number of years. I think it was about three years ago, something like that. I don't know.

Q. Have you ever had any conversations with Mr. Berg- [75] mann concerning Adolph Hitler, Mr. Posey?

A. From time to time, yes.

Q. Where did those conversations usually take place?

A. Oh, around the property there.

(Testimony of Alec R. Posey.)

Q. When you speak of "the property," do you mean Mr. Bergmann's property?

A. Mr. Bergmann purchased the property later on.

Q. Now, when did those conversations first begin to occur?

A. Well, after he purchased the property, he was making repairs on the property from time to time. He was there very nearly every day for two or three months, perhaps.

Q. Can you tell us when he purchased the property?

A. No, I can't give you the exact date.

Q. I see; can you tell us the year?

A. Well, about three years ago.

Q. About three years ago? A. Yes.

Q. What were these conversations you had with Mr. Bergmann concerning Adolph Hitler? By the way, was any one else present at the time you had these talks?

A. I can't recall whether there were people present or not—it has been some time ago—but my conversation with him in regard to Hitler was this: I was told by him that Hitler was O. K.

The Court: Let's find out the date first. [76]

Mr. Dean: All right.

Q. Mr. Posey, you are about to tell us a statement, I take it, that Mr. Bergmann made to you.

A. Yes, sir.

Q. Can you tell us to the best of your ability when that statement was made?

(Testimony of Alec R. Posey.)

A. Well, it wasn't long after he had started to work around the place that he started to talk to me that way; maybe 2 or 3 weeks after he purchased the property.

Q. Well, now, can't you fix the time of the purchase of the property? As best you can fix it, approximately when was it? You say about 3 years ago. What time of year was it? Do you recall that?

A. Let me see. Well, now, I will have to figure on the lease that he gave to the present lease. That expires the first of July, and that was given for a term of three years, so I judge that it was about that time or a little previous to that time that he commenced having little talks with me.

Q. About July, 1940? A. Well——

Q. Is that right?

A. Yes. Let's see; that would be 1940.

Q. All right.

Now, will you tell us what the conversation was? What he said, if you can remember? [77]

A. Well, relative to Hitler, I was informed by the defendant that Hitler was all right, O. K.

Q. Was that all that was said about Hitler?

A. Well, he said, "He is more capable of running the Government" than the way our Government was functioning at that time.

Q. Did you have any conversation with him concerning his giving anything to Hitler?

A. Well, he made the remark that if Hitler needed it, he could have everything that he had.

Q. Was that statement made at about the time

(Testimony of Alec R. Posey.)

you fixed here; approximately 3 years prior to 1943?

A. Those conversations were spread along for about three months from time to time because I saw him almost every day.

Q. I see.

Now, did you have any conversation with Mr. Bergmann concerning Hitler coming to the United States?

A. Well, he made the remark.

Mr. Jacobson: May we have a yes or no answer and then the time fixed, your Honor?

The Court: Yes. So long as this is a series of converstaions, we ought to have some date fixed.

Q. By Mr. Dean: I take it that you are about to give a statement, Mr. Posey, that Mr. Bergmann made.

First of all, let me ask you this: Did the statement [78] occur during the 3-month period you have been referring to? A. Yes.

Q. Do you recall whether or not any one else was present? A. I couldn't say.

Q. Will you tell us whether or not you had any conversation with him concerning Hitler coming to the United States?

A. Oh, yes. He said if Hitler came over here he would show us how to run the Government.

Q. Did you have any conversation with Mr. Bergmann about his return to Germany?

A. Well,——

Q. Excuse me. Will you answer that yes or no, Mr. Posey? A. Sir?

(Testimony of Alec R. Posey.)

Q. Did you have such a conversation?

A. Yes.

Q. Now, did it occur during the same three months period that you have been relating? A. Yes.

Q. You can't fix for us, I take it, what part of the three months period it occurred in? A. No.

Q. Will you tell us what the conversation was?

A. About returning to Germany. [79]

Q. Yes.

A. He said after the trouble was over he would get rid of what he had here and go back to the old country and live like a white man.

Q. Are you positive that that last statement "live like a white man" was made?

A. I believe that is just about what it was.

Q. Now, did you have any conversation, Mr. Posey, concerning the relative efficiency of the German and American peoples with Mr. Bergmann? If you did, I wish you would answer it "Yes," or if you didn't, "No."

A. Well, it was some time ago. I couldn't say—I don't believe I could recall any special talk.

Q. I see; very well.

A. I mean relative to that.

Q. Have you ever had a conversation with Mr. Bergmann in which he described himself in any way?

A. Well——

Q. Did you have such a conversation?

A. Yes.

Q. Did that occur during this three months period you have been testifying to?

(Testimony of Alec R. Posey.)

A. Uh-huh.

Q. What did he say?

A. He gave himself the description of "Hitler, Junior."

Q. Did he use any other description? [80]

A. Well, I believe he mixed that up with "Hitler No. 2."

Mr. Dean: I think that is all the direct examination, your Honor.

The Court: I think, gentlemen, we will take our noon recess at this time. It is the noon hour and I have certain engagements I have to keep. I presume the cross examination of this witness will take some time so we will take our regular recess and you come back at 2:00 o'clock, Mr. Posey.

The Witness: All right.

The Court: All witnesses who have not been excused will return at 2:00 o'clock.

(Whereupon, at 12:00 o'clock noon a recess was taken until 2:00 o'clock P.M. of the same day.) [81]

Los Angeles, California,
Tuesday, November 17, 1942.
2 P.M.

The Court: All right; proceed. Call your next witness.

Mr. Dean: Mr. Posey is about to be cross examined.

The Court: Yes, that is right. Resume the stand, Mr. Posey.

ALEC R. POSEY,

called as a witness by and on behalf of the plaintiff, having been previously duly sworn, resumed the stand and testified further as follows:

Cross Examination

Q. By Mr. Jacobson: Mr. Posey, can you hear what I say? A. Yes, sir.

Q. As I understand your testimony before the noon recess, you had some four conversations with Mr. Bergmann.

A. What kind of conversations?

Q. Four. There were 4 conversations that you remembered? A. Well——

Q. The first one about——

The Court: There is no use to summarize because he probably wouldn't remember them. Just start in with the first one without giving the number.

Q. By Mr. Jacobson: After you had these conversations with Mr. Bergmann what was your feeling toward Mr. Bergmann? [82]

A. Well, sir, it was sort of a mixed feeling that would be pretty hard to explain; but under the circumstances and conditions that exist it would be pretty hard to put too much blame on the defendant for the simple fact that he said he fought shoulder to shoulder with this man in the Austrian Army during World War I. The only way we have of judging one another is to judge by ourselves. If I had been in his place and did what he did, it would be hard for me to get rid of the feelings

(Testimony of Alec R. Posey.)

that I had towards him when I was in the army with him fighting.

Q. Had he said that he had fought in the Austrian Army with Mr. Hitler?

A. He said he fought in the army with Mr. Hitler, the same army that Mr. Hitler was in.

Q. That is the Austro-German Army in the first World War?

A. That is the way I understood it.

Q. Did Mr. Bergmann ever tell you about his other brothers? A. No, sir.

Q. You don't recall him telling about Kurt having been killed in France? A. No, sir.

Q. Or about Edmund having been in the artillery or some such thing? A. No, sir. [83]

Q. Is your feeling toward Mr. Bergmann today friendly? A. How is that?

Q. Is your feeling today friendly toward Mr. Bergmann? A. In a way, yes.

Q. Now, when you had this conversation about Mr. Bergmann saying in substance, "Hitler is more capable of running the Government than the way it is now run"—do you remembmer saying that this morning? A. I do.

Q. Had there been a discussion about the policies of the administration of President Roosevelt?

A. No, sir.

Q. There had been no discussion about the New Deal? A. No, sir.

Q. Did that remark end the conversation or did you keep on talking?

(Testimony of Alec R. Posey.)

A. Well, I didn't do much of the talking. I was listening.

Q. Is that true?

A. There wasn't any controversy with me. I was just astounded; that is all.

Q. In most of your conversations with Mr. Bergmann did he do most of the talking?

A. He certainly did.

Q. Now, Mr. Bergmann is supposed to have said, "If [84] Hitler would come over here he would show us how to run the Government." Do you recall that statement? A. I do.

Q. What was the background of that statement, if any?

A. I couldn't tell you now. I don't recollect.

Q. That wasn't——

A. But he was full of that kind of talk and he just talked it all the time and talked about the same thing all the time.

Q. That is during this two or three months?

A. Yes, sir.

Q. In 1940 or late '39?

A. I don't recall just the exact date.

Q. Well, there is a lease expiring next July which you said was a 3-year lease.

A. Yes. This was during the time the lease was being signed.

Q. So it was in the spring probably of 1940?

A. Somewhere in 1940.

Q. In speaking of his desire to return to Germany some day—do you recall that? A. Yes.

(Testimony of Alec R. Posey.)

Q. Did Mr. Bergmann ever mention to you that he had a mother there? A. No, sir.

Q. You never knew that? [85] A. No.

Q. Did he say anything about wanting to visit any other countries? A. No, sir.

Q. Did he say anything about what he would do with his property while he was gone?

A. He would get rid of it and take it along with him in his pocket.

Q. He was going to sell it before he left?

A. Yes.

Q. Did he say that? A. To that effect, yes.

Q. Just what did he say?

A. Not word for word. It would be pretty hard to recollect that—it has been so long ago—but in substance it was just that, that he would sell out and take what he had with him over there.

Q. And never come back?

A. He didn't say anything about never coming back, but he said he would go over there.

Q. Did he say when he planned on doing that?

A. Well, he didn't name any time, but he supposed at that time that there would be a day when he could go back under Hitlerism and that would be the time he would go.

Q. That is when the war was over?

A. Yes, sir. That is the way I took it. [86]

Q. But do you recall what he said?

A. Not verbatim.

Q. What is your best recollection of the words he used?

(Testimony of Alec R. Posey.)

A. Well, he wanted to do it—he said when the trouble was over he would go back to the old country—that is Germany, I suppose—and live a different life, the life of a white man, something to that effect.

Q. Go back there and live like a white man. Is that right?

A. Yes, live right. He called it "right."

Q. Live in the right way, you mean?

A. That is the way I suppose he meant.

Q. Now, did you and Mr. Bergmann have any arguments or quarrels about the advisability of the United States lending or leasing goods and supplies to England? A. No, sir.

Q. Did you and Mr. Bergmann have any arguments or discussions about any political views of the administration? A. None in particular.

Q. Now, was it 2 or 3 months there that you used to see him quite a bit? A. Yes, sir.

Q. You had seen him almost every day in that 2 or 3 months period? A. Almost every day.

[87]

Q. Did you talk about subjects other than Germany and Hitler?

A. No. Outside of that, we did very little talking, except the work that he had on hand. We talked about that from time to time.

Q. That is the work he was doing?

A. The improvements he was making.

Q. He did all the work himself, did he not?

A. I helped him a little bit.

(Testimony of Alec R. Posey.)

Q. You helped him some? A. Yes.

Q. Just voluntarily helping him?

A. Yes. It didn't cost him a cent.

Q. You hadn't lived there, had you, when he filled in that property? A. How is that?

Q. Had you lived in that neighborhood on Seaside when he filled in that property he bought?

A. Well——(pause)

Q. On West Seaside near Santa Clara?

A. I don't know when he bought that, but I have been living on this property that he owns now on Cedar about seven years.

Q. What address on Cedar? A. 248.

Q. 248 Cedar in Long Beach? [88] A. Yes.

Q. You are a tenant and—what is it; an apartment house? A. A rooming house.

Q. It is a rooming house? A. Yes.

Q. Not managed, however, by Mr. Bergmann, is it? A. No, leased.

Q. Do you know the name of the landlady?

A. Yes.

Q. Who is the landlady?

A. Mrs. S. J. Denning.

Q. How long have you been there? A. Sir?

Q. How long have you been there?

A. About seven years.

Q. How long since you have had any conversation with Mr. Bergmann at all?

A. Oh, it has been quite a while. I couldn't say.

Q. Do you suppose it is as much as two years?

A. About. He came by there to deliver some

(Testimony of Alec R. Posey.)

lumber about—well, maybe 6 months ago, but we didn't have any conversation that amounted to anything.

Q. He just put the lumber on the lot and went his way? A. Yes.

Q. He delivered the lumber himself? [89]

A. Well, he had another party with him.

Mr. Jacobson: That is all, Mr. Posey.

Mr. Dean: No redirect examination.

The Court: All right, Mr. Posey; you may be excused.

(Witness excused.)

The Court: Call your next witness.

Mr. Dean: Mr. Beck, will you take the stand?

ALEXANDER BECK,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, testified as follows:

The Clerk: Please state your name.

The Witness: Alexander Beck.

Direct Examination

By Mr. Dean:

Q. Mr. Beck, what is your occupation?

A. Insurance agent.

Q. How long have you been so employed?

A. Nearly 50 years; 30 years by this company.

Q. You live in Long Beach, do you, Mr. Beck?

A. 30 years.

(Testimony of Alexander Beck.)

Q. With what company are you affiliated?

A. Travellers.

Q. You say you have lived in Long Beach 30 years. Is that correct? A. Yes, sir.

Q. Do you know the defendant Friedrich Walter Bergmann? [90] A. Yes, sir.

Q. When did you first meet Mr. Bergmann?

A. I may have met him a little sooner than I am going to state, but I think—I was a member of the City Council of Long Beach from 1921 to 1927, and I think I first knew him in a measure about 1922 when, I think, he was one of the principals that came before the City Council for some improvement done on property he owned on West Seaside——

Q. I see.

A. ——and which he was continuously improving. I think he wanted to have the others join with him in those improvements in improving their own property. He did a lot of work on his own property.

Q. I see.

Did you ever have a conversation with Mr. Bergmann concerning his American citizenship, Mr. Beck?

A. Well, he brought that up—well, yes.

Q. Just a moment. A. Yes, sir.

Q. Let me ask you a few preliminary questions first. A. Yes, sir.

Q. When did the conversation take place?

A. This may not be the one you refer to, but the first conversation, I think, he told me at one time maybe in 1936 or '37—I am not quite sure, that he

(Testimony of Alexander Beck.)

had become an American citizen, had taken out his papers. [91]

Q. Did he subsequently refer to his American citizenship in any other conversation at a later date? A. Yes.

Q. When was this, Mr. Beck?

A. In March, 1941.

Q. Will you tell us the occasion for the conversation? Where did it take place?

A. It took place at his property on West Seaside.

Q. What was the occasion for your visiting his property there on West Seaside?

A. Years ago when Mr. Bergmann came here, I think—I am quite sure—he availed himself of the facilities of the Y.M.C.A. We run a little campaign, as we do yearly, and at this time it was the fourth time we had called upon him. I with others had called upon him for a subscription to the "Y". On this particular occasion—it was March of 1941—I took with me Mr. M. H. Neilson, a merchant and secretary of the Board of the Y. M. C. A., J. C. Hoffman, a member of the Y.M.C.A., a realtor, and Clyde Gates, also a member of the Y.M.C.A.

Well, we had gone down there before, one or two of us, and didn't get anywhere. So, think I, we will take four and see if we can't get a subscription.

Well, just as soon as we got there, there wasn't a chance for any one but Mr. Bergmann to get

(Testimony of Alexander Beck.)

in a word. He does the talking as has already been testified. [92]

Q. Will you tell us what the conversation was and the occasion for which you and the other gentlemen visited him?

A. Well, the occasion was to try to get a subscription for the Y.M.C.A.

He commenced a tirade against the Government, in essence, that the Government was not neutral at all, very unfriendly, had given aid to England, which he seemed to hate, and the like, and was most ashamed of his American citizenship and felt like having it canceled or suspended himself.

Q. Did he make that statement to you?

A. In the presence of these other three men as indicated in my previous statement, yes.

Q. Did you have any further conversation with him concerning the actions of the German Government in the conduct of the war?

A. Well, in essence it was this: It may not be the very language, but, "It was no more harmful for Germany to do what she was doing and killing innocent children than it was for the Treaty of Versailles which provided for the starvation of the German people." That is the essence of it.

Q. Is that just about the sum and substance of the conversation?

A. That is, sir. I haven't spoken to him since because I haven't seen him. [93]

The Court: How did this conversation about international affairs come up on a trip, the object

(Testimony of Alexander Beck.)

of which was to secure a subscription to the Y.M.C.A.? What has that got to do with the conduct of the war in Europe?

The Witness: Nothing at all in my opinion, but Mr. Bergmann, whenever you talk to him, if you have ever had a chance to get a word in, you are somebody. He does the talking.

The Court: How did he start to talk on that subject? Why was he saying that to you? You were asking him for a subscription to the Y.M.C.A., weren't you?

The Witness: This is an American institution in a way——

The Court: I know that.

The Witness: ——and here the Government was doing all this. He wanted to get out of giving us a subscription. He wanted to talk about this other affair.

The Court: Oh, I see.

The Witness: That is the essence of it.

Mr. Dean: That is all the direct examination, your Honor.

The Court: All right.

Cross Examination

Q. By Mr. Howser: Now, Mr. *Bergmann*, you say you have been engaged in the insurance business in Long Beach for approximately 30 years?

A. Not in Long Beach. 28 years in Long Beach, yes, [94] sir.

Q. And over the past years that you have been

(Testimony of Alexander Beck.)

acquainted with Mr. Bergmann, you have endeavored to sell him insurance, have you not?

A. Somewhat, partly at his own solicitation. He asked about it and I submitted to him a formula but never did any business with him.

Q. You never did any business with him?

A. He came to me about some compensation insurance on a building, on property he bought on East 7th Street.

Q. To your knowledge he has owned various pieces of property in Long Beach?

A. The only three pieces of property that I know he has owned is the one on West Seaside on which he has done a lot of work to improve it to the credit of the city and to the credit of himself. He is a hard worker. Then the property on West 7th Street he sold and made a profit on the deal, and then the property that this gentleman who just testified before me lived on on Cedar.

Q. I see.

A. All of his properties have been improved and he has tried to put them in good condition.

Q. You have no knowledge of a piece of property he owns near our Civic Center, near our Veterans Building in Long Beach?

A. Yes. That is the property on Cedar. [95]

Q. Have you ever had any conversation with him respecting his donating that property to our City of Long Beach? A. No.

Q. Now, you say when you were a City Councilman he did appear before you requesting that

(Testimony of Alexander Beck.)

the Councilmen do something to get the other people of the neighborhood to improve their property?

A. As you have indicated by former questions to others, the West Seaside district wasn't a very desirable location. 15 or 20 years ago when I was a member of the City Council there were a lot of buildings that should have been condemned. Now, he improved his property.

Q. By that you mean what, Mr. Beck?

A. He put bulkheads around, hauled in dirt, planted trees, planted flowers and improved that property he had and he wanted others to do that. His property in a measure was a show place down on West Seaside.

Q. And Mr. Bergmann to your knowledge also planted other shrubs and trees along the parkways of property he didn't own; isn't that true?

A. I don't know that, but the City owns the parkway. Yes, he planted them.

Q. In other words, he planted trees down there on the City's property to beautify the district?

A. Yes. [96]

Q. He came to you and the other Councilmen and wanted the City to help build the area up a little; isn't that true?

A. I am inclined to believe that was his thought, yes.

Q. Now, you say that you had occasion to converse with him during the year 1936 or '37 when he had become a citizen?

(Testimony of Alexander Beck.)

A. Yes. I will qualify that. I think he told me he had become a citizen.

Q. An American citizen?

A. Yes, sir.

Q. Where did that conversation take place?

A. Occasionally I would meet him on the street when he would be going up to the Ocean Center Building or the Jergins Trust Building.

Q. What did you observe about his conduct and attitude at that time?

A. I didn't think anything about it. I thought that was a natural thing to do. I myself am a naturalized citizen having been born in Denmark.

Q. At that time he told you that he had qualified as an American citizen?

A. Yes, I am quite sure it was about that date. I may be mistaken as to the year. And then, if you will permit me, I think I had occasion one time when we had an election in which I was interested, not as a candidate but the [97] candidacy of others, to ask him if he voted; and I think he told me he didn't vote, that there was something the matter with the Government, or something like that, he didn't particularly care for and didn't vote.

Q. You don't recall just what particular reason he had?

A. No. It wasn't against the national Government, but I consider any man who doesn't vote isn't a good citizen.

Q. But we unfortunately have many who do not vote, do we not?

(Testimony of Alexander Beck.)

A. That is right; too many.

Q. Who nevertheless are good citizens?

A. Yes.

Q. Now, you and four other men went——

A. Three.

Q. Three men? A. Yes.

Q. ——went down to impress upon Mr. Bergmann that he should make a contribution to the Y.M.C.A.?

A. That is the thought we had in mind, yes.

Q. And you had been down there on a previous date yourself, had you not?

A. Not at this time. In 1936 I had a Reverend Babbitt with me; in 1937 I took, I think, Mr. Gossilman of the Y.M.C.A., and the secretary of the Y.M.C.A. Then when he was fixing this house in 1940 I took Mr. Don Condit and went to [98] see him, and then Don Condit went alone to see him afterwards. That was in 1940 when he had this property that the gentleman speaks about on Cedar Avenue.

Q. Mr. Beck, you say when Mr. Bergmann first came to Long Beach that he lived in the Y.M.C.A.?

A. That was my understanding, yes.

Q. And they had befriended him?

A. Well, in a sense of the word, yes. You know, a fellow doesn't go to the Y.M.C.A. unless he likes to. Mr. Bergmann was a clean man. He didn't smoke, didn't drink and the like, and I kind of think he liked the environment there. I don't remember seeing him there. He may have been.

(Testimony of Alexander Beck.)

Q. You believed because of the fact he had made the "Y" his home that he would be a likely prospect to contribute something?

A. I would think so, if a man has plenty of money at that time.

Q. You knew when you went to see him in '41 that oil had been struck on his property and he was financially able?

A. Yes. He told me two years before that that oil had been struck on his property.

Q. And this conversation, I will ask you if it isn't a fact, Mr. Beck, that he told you that he believed from the large amount of taxes that he was paying, that certain portions of those taxes were going into certain things and that [99] was one of the reasons why he was not contributing to the "Y"? A. No.

Q. Did he tell you that he from time to time believed in personal charity; that he would give directly to people as they came to him?

A. He may have said that.

Q. Do you recall any conversation with Mr. Bergmann wherein he stated that, upon his death, he was going to leave certain property of his to the "Y" in Long Beach?

A. I don't recall just the occasion, but I am quite certain he did make that statement.

Q. And he was not only going to leave part of his property to the "Y" of Long Beach, but also to the "Y" of Toronto, Canada?

(Testimony of Alexander Beck.)

A. I don't remember him saying anything about Canada.

Q. You recall he was also going to leave part of his property to the Salvation Army?

A. Yes, I think he mentioned that, too.

Q. Do you recall, Mr. Beck, of Mr. Bergmann stating that he was also going to leave part of his property to the City of Long Beach——

A. No.

Q. ——for park purposes? A. No.

Q. Or for museum purposes? [100]

A. No. He stated that he had at both Smithsonian Institute and here in Los Angeles and would like to leave something if there was a place in Long Beach to house it. If I remember rightly, we haven't any place to house those things. I think he did state if there was a place like that in Long Beach, a room owned by the City, he would like to have those things left for the City of Long Beach, those archeological specimens.

Q. And the people of Long Beach?

A. Yes; that he did say.

Q. Now, during this conversation when you say he stated that he would destroy or cancel his citizenship papers, do you recall in that conversation a reference about a discussion of this country joining up with England in a common union for the people?

A. No, he didn't like England.

Q. Pardon me?

A. He didn't like England.

(Testimony of Alexander Beck.)

Q. I appreciate that, but do you recall any conversation about Great Britain and this country joining in a common union? A. No, I don't.

Q. Do you recall any discussion about the social classes of people? A. No.

Q. Or militarism? [101] A. No.

Q. Or aristocracy?

A. No. If he did, he did the talking, because I never got a chance to say much.

Q. Here is what I am trying to get at, Mr. Beck: Do you recall Mr. Bergmann saying that if the day should come when this country would join with England in a common union wherein in this country we would have classes and aristocracy as they do in England, that he would just as soon tear up his citizenship papers?

A. No.

Q. You don't recall that?

A. No. I think we have some of that now in this country.

Q. Pardon me?

A. I think we have some of that in this country now, classes and aristocracy.

Mr. Howser: I believe that is all, your Honor.

Mr. Dean: No redirect examination, your Honor.

The Court: All right, Mr. Beck; you may go about your business.

The Witness: Thank you, Judge. You are a nice man.

(Testimony of Alexander Beck.)

The Court: Thanks for the compliment. It's too bad you can't vote for me.

(Witness excused.)

Mr. Dean: Mr. Coleman, will you take the stand, please? [102]

WALTER E. COLEMAN,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, testified as follows:

The Clerk: Please state your name.

The Witness: Walter E. Coleman.

Direct Examination

Q. By Mr. Dean: Mr. Coleman, what is your occupation? A. Jewelry man.

Q. Where do you live?

A. I live in Long Beach; 1700 Carson. That is my residence.

Q. How long have you lived there?

A. I have lived there a little over a year.

Q. I mean in Long Beach, how long have you lived?

A. I have been in Long Beach about 19 years.

Q. Are you acquainted with the defendant Friedrich Walter Bergmann? A. Yes, sir.

Q. How long have you been acquainted with him?

A. Oh, about 3 or 4 years, I guess.

(Testimony of Walter E. Coleman.)

Q. With reference to the year 1940 did you have a conversation with Mr. Bergmann concerning the sending of money to Germany?

A. Well, he was telling me——

Q. Just a moment, please. Do you remember what time of year this conversation took place? Can you fix an approx- [103] imate date?

A. Well, that was in 1940, possibly along in August. It might have been along in there some place.

Q. Was anyone else present during the conversation? A. No.

Q. Will you tell us what it was as you recall it?

A. He said that he had sent $1500—pardon me for mentioning this, but I had bought property from him and I just related to him, I said, "You have got lots of money." And he just mentioned that he had sent $1500 back to Germany.

Q. I see. Did he describe to whom he had sent it in Germany or where he had sent it?

A. No.

Q. Or for the purposes for which it had been sent? A. No, he never said that.

Q. Directing your attention to March of 1942, this year, did you have a conversation with Mr. Bergmann about world conditions or conditions in this country at that time? A. Yes.

Q. Where would you say that conversation took place as you recall it?

A. That was at his home.

(Testimony of Walter E. Coleman.)

Q. In Long Beach? A. Yes, sir.

Q. Who else was present, if anybody?

A. There was nobody else present but Walter and I. [104]

Q. What was the conversation as you recall it?

A. Well, I went down there to see him about some lumber—and it seemed like it is his rule to sleep a little late—about 10:00, I guess, in the morning. I woke him up and he came out and, of course, the newspaper was laying on a little bench out there that he has there, and I picked up the newspaper and said, "Look at this, Walter."

He read the headlines, looked it over. It was something about Roosevelt had made some plea to the——

Q. You mean the article in the newspaper referred to that?

A. Yes. He had made some plea to the other countries, someway about being careful with each other in a sympathetic way, and said we should come nearer to prayer and things that way.

Q. What was the conversation?

A. Well, then, Walter said that "This son-of-a-bitch of a Roosevelt would get his," and that "This goddamned religion would have to go."

Q. Was there anything else said at that time by him that you recall? A. No.

Q. Did you have any conversation with him concerning the taking over of this country by anybody?

(Testimony of Walter E. Coleman.)

A. He said whenever this country was taken over, why, then, we could get things regulated, or something in that form. [105]

Q. Is that the statement as you recall it at this time? A. Well,—(pause)

Q. Is that your best recollection of it?

A. That is it in substance. It has been so long ago.

The Court: Did he mention taken over by whom or what?

The Witness: It would be taken over by Germany.

The Court: Oh.

The Witness: That our system—the Government of Germany is a better one than ours.

Q. By Mr. Dean: Was anything said, Mr. Coleman, about this country being easy to take over, that you recall?

A. Yes. He said, "When it comes to the right time, why, then, it would be easily taken over."

Q. Did you ever have any conversation with Mr. Bergmann about the FBI? A. Yes.

Q. When did that occur?

A. That was, I believe, along in—it must have been in April or June.

The Court: What year?

The Witness: That was in—I believe that was in 1942, Judge.

The Court: This year?

The Witness: I believe it was. He said that the FBI was on his trail; that he realized those

(Testimony of Walter E. Coleman.)

things, but he said [106] he could outsmart them any time.

Q. By Mr. Dean: Now, Mr. Coleman, since August of this year, 1942, have you seen Mr. Bergmann to talk to him?

A. Yes. Mr. Bergmann came to my store. He called me over the telephone, told me he wanted to talk with me and I told him—I said, "All right, Walter, come on up."

He came, and there was no one else in the store so I said, "We will just close the front door." My car sits out in the back of my store and we just walked through the store and I said, "We will go out here."

Walter asked me if there was any one there and I told him no. I said, "We will go out and sit in the car and talk." And we did.

Q. Did you have a conversation then?

A. Well, he was telling me that he was awfully grieved, Walter was; he was broken up. The FBI had closed in on him; something about his citizenship, or something that way, and he was telling me about it and was awfully grieved over it.

Q. Do you recall what he said?

A. Well, he went into great rage and I told him that he should calm himself. He went into a great rage of pulling his hair and frothing at the mouth. He would say, "Oh, my father and my mother." I suppose like any boy would, and so on that way.

(Testimony of Walter E. Coleman.)

Q. Was that all of the conversation? Did you have [107] any conversation concerning your appearance in this case?

A. Yes. At that time he wanted me to make a statement in regard to his character as a citizen of our country, and I told him that I couldn't hardly afford to do that, "You know, Mrs. Coleman, she is a teacher here and," I said, "we can't do that."

Q. Is that the substance of the conversation, Mr. Coleman? A. That is right.

Q. You appeared under subpoena here, did you, Mr. Coleman? A. Yes, sir.

Q. You didn't voluntarily offer to testify here against Mr. Bergmann, did you? A. No, sir.

Mr. Dean: That is all the direct examination, your Honor.

The Court: Did you at that time, while he was telling you his troubles, say anything to him about some of the things that you had in mind or you remembered his telling you? I mean when he was telling you his troubles, did you remind him of some of the things he said to you or may have said to others that didn't exactly sound discreet?

The Witness: No. I told him—I said, "Possibly it is a thing that we have all got to go through with." That "this war is an awful thing." Just something that way. [108]

The Court: All right. Cross examination, Mr. Howser or Mr. Jacobson?

(Testimony of Walter E. Coleman.)

Cross Examination

By Mr. Jacobson:

Q. You talked in the back end of the lot where your store is located? A. Pardon me?

Q. Your conversation, the last one, was in the automobile in the rear of your store?

A. Yes, sir, back of the back door.

Q. Did Mr. Bergmann appear to you to be greatly distressed? A. Yes, sir, he did.

Q. Did he tell you that a suit had been filed against him to revoke his citizenship?

A. Yes.

Q. Did you give him any reason other than the ones you have given in court for not being willing to testify in his behalf?

A. No, that was the only reason that I could give him, the one that I told him.

Q. What did you mean by "it is something we have all got to go through"?

A. Well, different grievances and troubles.

Q. You are not a naturalized citizen yourself, are you? A. Who? [109]

Q. You are not foreign born, a person who has been naturalized? A. No.

Q. You were born in this country?

A. No, sir, in Arkansas.

The Court: He means not in California. Arkansas is a part of the United States, I hope.

The Witness: That is right.

Q. By Mr. Jacobson: You didn't have to be naturalized coming from Arkansas, did you?

(Testimony of Walter E. Coleman.)

A. No.

Q. Mr. Coleman, did Mr. Bergmann tell you the nature of the charges against him?

A. I believe he did.

Q. Well, now, recalling that, what did he say?

A. I don't remember just what all he did say because I wasn't interested so much, because my mind was on my work.

Q. That is, you wanted to go back to the store?

A. Yes, sir.

Q. Did you express the opinion to him that he was innocent of the charges? A. No, sir.

Q. Did you express any opinion that he was guilty of the charge? A. No, sir.

Q. Did you know Bergmann when he received his citizen- [110] ship?

A. I didn't know when he received it.

Q. He never said anything to you about that?

A. No, he never mentioned it.

Q. Now, you had a great many conversations with Mr. Bergmann, did you? A. Yes, sir.

Q. How many would you say you have had?

A. Every time I see him.

Q. Well, how often would that be during the time you have known him?

A. I couldn't say because when we were buying that piece of property, in and out, he was there sometimes twice and three times a day.

Q. Would you say you have had as many as a hundred conversations with him?

(Testimony of Walter E. Coleman.)

A. Well, I don't know whether or not I have seen him that many times.

Q. I just want your best estimate.

A. Well, possibly I have seen him 40 or 50 times.

Q. And talked to him on most every occasion?

A. Sure; say "Howdy" or "Goodbye" or something.

Q. Now, did you discuss with him political views; as to whether the National Administration was a good administration or an unsatisfactory one?

A. Well, he would bring those subjects up sometimes, [111] but we didn't go into them to the deepest.

Q. Oh, how deeply did you go into them?

A. Well, possibly he would say this is right or that is right and I would say yes or no, and so on that way. That is about the substance of it.

Q. Mr. Bergmann was intensely interested, was he not, in the policies and views of President Roosevelt? A. Pardon me?

Q. He was intensely interested in the policies and views of President Roosevelt?

A. Well, I don't know whether he was interested in—he was interested in what way?

Q. I was going to ask you. Did he express any views, whether he agreed with President Roosevelt or disagreed with President Roosevelt?

A. He wasn't interested in his behalf.

Q. Well, was he interested against him?

A. Well, yes, in his general sentiments he was.

(Testimony of Walter E. Coleman.)

Q. Was that sentiment opposite from your own political convictions? A. Why, yes.

Q. You were very much a pro-Roosevelt supporter, were you not? A. Pardon me?

Q. You were very much a pro-Roosevelt supporter, were you not? That is, you believed in his policies? [112]

A. I didn't vote for him, but yet he is my President.

Q. Well, did you agree then with everything he has done since he became president?

A. Well, I couldn't say that because I don't know what all he has done.

Q. Did you ever discuss with Mr. Bergmann the question of the wisdom or lack of wisdom of sending American merchandise to England under the so-called lend-lease plan?

A. I don't remember.

Q. Did you ever discuss with Mr. Bergmann whether or not the policy of the isolationists or the policy of the interventionists should govern?

A. I don't remember.

Q. Do you remember discussing with Mr. Bergmann whether the views of Senator Nye and Senator Wheeler were sound, or whether the views of the opposite party were sound?

A. Oh, possibly there would be some statement come out that he would mention. He would say, "That is right," or I would say it was right, or I would say it was wrong, and he would say it was wrong, and that is about the end of it.

(Testimony of Walter E. Coleman.)

Q. Do I understand that you told Mr. Bergmann that because you were in business and because your wife is a school teacher that it was unwise for you to testify in his behalf?

A. Well, I just told him I thought it was unwise for [113] me to do it; that I couldn't afford to do it.

Q. What did you have in mind when you said that? A. Just that.

Q. What did you have in mind? Why was it unwise, in your opinion, to testify in his behalf?

A. I am an American citizen.

Q. He is, too, is he not? A. I don't know.

Q. Well, was the prejudice or the feeling in the community in which you lived such that you felt your business would suffer if you testified on behalf of Mr. Bergmann? A. No, sir.

Q. Was the sentiment such that you felt that your wife might be embarrassed in her position as a public official if you testified in behalf of Mr. Bergmann?

A. Of course, she would have been, but that wasn't the full reason. I just didn't want to do it.

Q. Why didn't you want to testify in court on behalf of Mr. Bergmann?

A. Why, because I didn't think it was right.

Q. That is what I want to find out; what was wrong about the request?

A. Well, the statements that he had made and so on; I just didn't think it was right.

(Testimony of Walter E. Coleman.)

Q. You didn't want to come to court and testify at all at his request. Is that right? [114]

A. That is right.

Q. Now, you have observed the work he has done in Long Beach, have you not?

A. Yes, sir.

Q. And the improvements he has made to his property? A. Yes.

Q. At any time did Mr. Bergmann discuss with you what he intended to do with his property at the time of his passing?

A. At the time of his passing?

Q. Yes.

A. He said he was going to will it or he had a will or was going to will it to the Y.M.C.A., or some institution in some way.

Q. The Salvation Army?

A. Something like that.

Q. Do you recall him making that statement?

A. Pardon me?

Q. Do you recall him making that statement?

A. Oh, yes; yes.

Q. This newspaper that you found on the bench outside of his apartment, that was some American newspaper, was it not?

A. Oh, yes, sure; the Morning Sun, I think, or something like that.

Q. At least, some paper published in Los Angeles County? [115] A. Yes.

Q. And in the English language; is that right?

A. I think it was, yes.

(Testimony of Walter E. Coleman.)

Q. During all the time you have known Mr. Bergmann, you haven't known of him reading any German magazines or newspapers, have you?

A. No.

Q. Was the question of union with England ever discussed between you and Mr. Bergmann?

A. No.

Q. Do you remember a book that came out urging a common government for England and America? A. No.

Q. At any rate, you don't recall discussing that question with Mr. Bergmann? A. No.

Q. Mr. Bergmann never elaborated on his statement that he had sent $1500 to Germany, had he?

A. Pardon me?

Q. He didn't elaborate on his statement to you that he had sent $1500 to Germany?

A. He told me that he had sent it.

The Court: But he didn't go into detail as to whom he sent it?

The Witness: Oh, no.

The Court: Or for what purpose? [116]

The Witness: No.

Q. By Mr. Jacobson: Did he say when he had sent it?

A. No, he didn't. I was just kidding him about him having lots of money and I just popped off and he told me about it, that is all.

Mr. Jacobson: That is all. Thank you.

Mr. Dean: No redirect examination, you Honor.

The Court: Step down.

(Witness excused.)

The Court: Call your next witness.

Mr. Dean: Mr. Shields, will you take the stand?

THOMAS STEPHEN SHIELDS,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, testified as follows:

The Clerk: What is your name?

The Witness: Thomas S t e p h e n Shields, S-h-i-e-l-d-s.

Direct Examination

By Mr. Dean:

Q. Mr. Shields, what is your full name?

A. Thomas Stephen Shields.

Q. What is your occupation?

A. Truck driver for the Los Angeles County Museum.

Q. Do you know the defendant, Friedrich Walter Bergmann?

A. The occasion I had to meet Mr. Bergmann was at the time I was assigned to take a load down to Long Beach from the museum. [117]

Q. Was that with Mr. Williams who has testified in this case heretofore?

A. Mr. Williams was my swamper; in other words, my helper.

Q. Do you recall the date of delivery of those objects to Long Beach?

A. It was April the 24th, as I remember.

(Testimony of Thomas Stephen Shields.)

Q. Had you seen Mr. Bergmann on any other occasion other than that?

A. The only time I ever seen Mr. Bergmann was the time when Mr. Wiedner and he were packing the objects that were going back to Long Beach.

Q. I see.

Now, at the time you testified concerning the return of these objects to Long Beach, did you have a conversation with Mr. Bergmann?

A. Well, it was just one of those things. Those conversations kept up and he talked about the general run of subjects, such as Hitler, his brother.

Q. What conversation, if any, did you have about Hitler?

A. Well, he said what a great man Hitler was and the great things he was going to do for Germany, and things like that. To him Hitler was the real man.

Q. Well, do you remember anything else he said about Hitler, or was that the substance of the conversation? [118]

A. Well, he talked about Hitler, about what he was going to do with the Jewish people, the cause of all the things in the world, and criticized also President Roosevelt along with the Jewish capitalistic system.

Q. Did he say anything about the Nazis in Germany? Did he mention that word "Nazis" during the conversation?

A. I don't recall him saying anything about the Nazis directly; although, of course, during the con-

(Testimony of Thomas Stephen Shields.)

versation—when Mr. Williams and I landed there, Mr. Bergmann was the only one there at the time, and later in the afternoon another man came on the scene; and it was more or less in between taking five minutes unloading the merchandise and taking it away that we talked about this and that and the other thing, the subject of politics and so forth.

Q. Did you ever have any conversation concerning his service in the first World War?

A. He talked about the time he was in the German Army; said he was an officer and was stationed down in Turkey. He said the gun crews were manned, in other words, by Turkish soldiers and officered by the German military.

Q. Did you have any conversation concerning his brother or one he referred to as his brother?

A. He talked about his brother being connected with the underseas activity, U-boat service. He said he was over to Japan. He was a commander of this German U-boat and was instructing the Japanese in the art of submarine warfare. [119] That was the only brother I heard him mention.

Q. What was his demeanor or appearance or perhaps both during this conversation?

A. Well, when he went into a tirade against the Government and the Jewish people, especially our President, he became very excited and little bits of froth would form on his lips. He became very, very excited.

(Testimony of Thomas Stephen Shields.)

Q. Well, did you have a conversation with him concerning any photographs?

A. He told of seeing a photograph that was exhibited to him by the German consul here showing a British man-of-war in the harbor in New York that had been damaged in the sea engagement with some German ship.

Q. Did he tell you who had shown him or had given him the photograph?

A. He said the German consul. What that consul's name is, I don't know; but he said the German consul showed it to him, showed the photograph to him.

The Court: What significance, if any, did he attach to that? What did he use it for? With what point did he bring out the showing of the photograph?

The Witness: The only thing I could make out of it was he was trying to show us just what he knew about things that were going along, sir. That is all I could make out it, sir.

Q. By Mr. Dean: Do you recall any other conversation [120] you had with him concerning conditions in the world or this country or Germany?

A. Well, from what I could gather from his conversation—some other men came in on the scene later in the afternoon—that after this thing was all over the Germans would really have the world at their feet.

Q. Did you see him do anything unusual when the conversation had reached a conclusion?

(Testimony of Thomas Stephen Shields.)

A. The only thing that appeared very unusual to me, when I had the truck all fixed up to go back to the museum, he just clicked his heels and said "Heil Hitler."

Q. Can you describe what he did; can you show the Court what he did?

A. I am not a very clever German militarist. He did this (illustrating) and said, "Heil Hitler."

Q. What was his demeanor when he said that?

A. Very serious.

Mr. Dean: I think that is all the direct examination, your Honor.

The Court: Cross-examine.

Cross Examination

By Mr. Howser:

Q. Mr. Shields, you say at the time he did that you had the truck all packed up and you were ready to leave?

A. Well, we had loaded the dollies and gear on the truck that we had used to transport the cases back into the [121] little hole in the wall where we had stacked the merchandise, and that is the salutation he gave us when we departed.

Q. For all purposes from what you observed, this "Heil Hitler" was his manner of saying goodbye. Isn't that true?

Mr. Dean: I object to that on the ground it calls for a conclusion.

The Court: That is all right. No. I have been trying to find out when it was used myself.

(Testimony of Thomas Stephen Shields.)

Mr. Dean: I withdraw the objection, your Honor.

The Court: It was used chiefly as a greeting, a salutation on leaving?

The Witness: I wouldn't know the routine of the German army or the Nazis.

The Court: That is all right. Now, what was the question?

Mr. Howser: I asked the witness, your Honor, if this wasn't the farewell expression.

The Court: All right.

The Witness: I don't know whether that is the general routine of giving farewell or not, but that is what he said when we left. He said, "Heil Hitler," and away we went.

Q. By Mr. Howser: What did you say?

A. I didn't know what to say, to tell you the truth. I didn't know whether to just let it go at that and go on or what. [122]

The Court: What did you decide to do? What did you do; just let it go?

The Witness: Just let it go.

The Court: You just dropped it?

The Witness: I just dropped it, yes, sir.

Q. By Mr. Howser: Did you have any thought at that time that he was perhaps a little touched in the head, as the expression goes?

Mr. Dean: I object to that on the ground it calls for a conclusion.

Q. By Mr. Howser: Mr. Shields, you concluded

(Testimony of Thomas Stephen Shields.)

from all this conversation with Mr. Bergmann, did you not, from his constant conversation, that he was quite a braggart?

A. Well, he didn't appear to be a braggart. He seemed to be very dissatisfied with the set-up in this country.

Q. Dissatisfied or satisfied?

A. Dissatisfied, sir.

Q. Well, he told you about all of his narrow escapes and activities as a German soldier?

A. He told me about narrow escapes as a German soldier?

Q. Yes.

A. The only thing he told me regarding the German soldiers, he said one time he was in a German hospital for the sick, that is, in a rehabilitation ward of the hospital where they were trying to bring him back to his former self [123] again by various means.

Q. Well, he told you also that he had a brother that was quite a U-boat expert?

A. That is what he was talking about. He told us he had a brother that was a U-boat commander who was over in Japan teaching the Japs the art of submarine warfare. He also went on to state that in the next couple of years the Dutch East Indies would go along with the Philippines.

Q. And at that time he also told you that he himself had been an officer in the German Army?

A. That is what he said.

(Testimony of Thomas Stephen Shields.)

Q. You didn't ask him any of these things, did you?

A. I had no particular reason to find out.

Q. In other words, he just volunteered all of this information to you?

A. That is the way it came out.

The Court: You didn't know the man from Adam?

A. The only time I ever saw the gentleman was when he was in the museum packing that material and——

Q. By Mr. Howser: That material had been on exhibition there, hadn't it? A. Yes.

The Court: And you had never met him except on that occasion?

The Witness: That is right.

The Court: You had no occasion to inquire about his [124] antecedents or his prowess and achievements or anything like that?

The Witness: It really meant nothing to me, what he did.

The Court: As a matter of fact, in your job you keep moving exhibits in and out. Sometimes they are paintings and sometimes they are all sorts of objects?

The Witness: That is right.

The Court: Art objects which people bring in and loan to the museum and then take them away. That is a part of the work?

The Witness: Yes, sir.

The Court: Your work?

(Testimony of Thomas Stephen Shields.)

The Witness: Yes, sir.

Q. By Mr. Howser: Mr. Shields, how long had this exhibit been in the Los Angeles museum to your knowledge?

A. I haven't the slightest idea.

Q. Do you know any of the circumstances as to why it was being removed from the Exposition Park to his home?

A. That, sir, I don't know.

Q. Now, in this conversation about Hitler you say that was during what year?

A. The only time I have ever been to this man's house was, as I say, this one time. We started out at about 11:30 in the morning, and by the time we had dinner and reached his place it was somewhere around 1:30, something like that, [125] because I had a very heavy load and it was very top-heavy for bulk so you couldn't drive too fast with the rig.

Q. That was April 24th, 1941?

A. Yes, sir. You see, the reason why I say that is because every day the County requires chauffeurs and truck drivers to make out a report of their activities for that day.

Q. We are sure the date is correct, Mr. Shields, that that is when you were there. A. Yes, sir.

Q. And during that visit with Mr. Bergmann he told you that he believed Hitler was doing a great work in Germany?

A. That is what his statement was, sir.

(Testimony of Thomas Stephen Shields.)

Q. And he was building up the youth of that country?

A. I don't know anything about the youth being built up.

Q. You don't recall anything about that?

A. Not about youth. For a while the conversation ran so rapid that, as far as minor details go, I don't recall all of those; but the higher lights of the conversation, such as the Jap situation and things like that, the Turkish campaign and things like that, stand out in your mind.

Q. Yes; but he became very excited about the capitalistic system, did he not?

A. He didn't like the set-up at all.

Q. Pardon me? [126]

A. He didn't like the set-up at all. He was very dissatisfied with it.

Q. And he was opposed to militarism of the old Europe? A. I don't recall that.

Q. Now, you say some other gentlemen came on the premises? A. That is right, sir.

Q. Do you know who that party was?

A. No, sir; I had never seen the gentleman before in my life. He was an elderly man. He walked in on the property and talked about Germany as he knew it in the old days and he talked about one time when he worked in the shipyards. He said that some friend of his wanted to get him in bad with the Government and he put a blue print under his mattress or some place in order in involve this man in some kind of a deal with the Government.

(Testimony of Thomas Stephen Shields.)

Q. Did this man appear to be a neighbor there?

A. He seemed to know Mr. Bergmann from the way they greeted each other. It wasn't like strangers meeting.

Q. How was he attired, dressed?

A. Which? The gentleman that came in?

Q. Yes.

A. He had on ordinary clothes.

Q. Overalls? A. No.

Q. And shirt? [127]

A. He just had what you might say street attire, a hat, coat and trousers.

Q. How long was he there?

A. Oh, he was there up to the time we left, as I remember it. He came in in the afternoon. Just what time he arrived on the scene, I don't know. We had worked a while and then took five minutes off and then went back and worked again. The place where we stood these objects was so small that we couldn't work steadily because it was suffocating.

Q. Then Mr. Bergmann told you about seeing a picture of a damaged battleship?

A. A British man-of-war.

Q. The fact of the matter is he told you just about anything you wanted to know, did he not, Mr. Shields?

The Court: Suggesting no one was asking any questions. It seemed to be like Hamlet's soliloquizing.

(Testimony of Thomas Stephen Shields.)

Did you start the conversation about world affairs in general?

The Witness: Well, I know so little of world affairs in general, your Honor, only from what I read in the newspapers, that I am not very thoroughly conversant with that. I would rather listen and be told than make a fool of myself.

The Court: You didn't engage in the conversation? He just started to tell you who he was and what he had done?

The Witness: He talked about this and talked about that and the other thing, in regards to what I stated about [128] his being in the Turkish campaign in the first World War, and so on.

The Court: National capitalism and all that kind of junk?

The Witness: He didn't think very kindly of the set-up in this country and he talked about being responsible for all the ill feelings that the world has now.

The Court: All right.

Mr. Howser: That is all, your Honor.

Mr. Dean: No redirect examination, your Honor.

The Court: All right; you may be excused, Mr. Shields.

The Witness: Thank you, sir.

(Witness excused.)

The Court: Call your next witness.

Mr. Dean: Mrs. Kinder, will you take the stand, please.

MRS. MARGARET KINDER,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, testified as follows:

The Clerk: What is you full name, please?

The Witness: Mrs. Margaret Kinder, K-i-n-d-e-r.

Direct Examination

Q. By Mr. Dean: Mrs. Kinder, I am going to ask you to speak just as distinctly and as clearly as you can so counsel for Mr. Bergmann can hear you. A. I will. [129]

Q. Where do you live?

A. 2720 Cedar Avenue, Long Beach.

Q. What is your occupation in Long Beach?

A. I work in my husband's meat market. I am a bookkeeper.

Q. How long have you lived in Long Beach?

A. 18 years.

Q. Are you acquainted with the defendant Friedrich Walter Bergmann? A. Yes.

Q. How long have you known him?

A. About 2 years, possibly a little longer.

Q. Now, directing your attention to a time about 2 years ago did you have occasion to negotiate with him concerning a business deal?

A. Well, I wouldn't say "negotiate."

Q. Did you have a conversation concerning a business deal? A. Yes, sir.

Q. Well, now, will you tell us the circumstances surrounding that conversation; and will you fix it

(Testimony of Mrs. Margaret Kinder.)

a little more definitely, if you can, as to the month of the year or season of the year?

A. Well, it was early in 1940. I wanted to move nearer our business and I went to his place to ask him to rent me an apartment. [130]

Q. I see. Well, now, what conversation did you have at that time? By the way, were you alone, just the two or you, or were there others present?

A. He and I were alone at this time.

Q. Will you tell us what the conversation was?

A. Well, he told me he didn't want to rent an apartment, that he wanted to live alone; that he had had a great many chances to rent his apartment but that he didn't want to; however, he was interested in leasing the place to a responsible person.

Q. Did you have any conversation with him at that time concerning a return trip to Germany?

A. Yes, sir. He told me that is why he wanted to lease the place. He would like to get his affairs in shape so he could go to Germany.

Q. Did you say anything to him at this time when he told you he wanted to go to Germany?

A. Yes. I told him he was living in a wonderful country; why did he want to go over there. Germany was at war and I should think with his money and the interests he had here, that he would be better off in this country.

Q. Did he make any reply to that statement?

A. Yes, sir, he did.

(Testimony of Mrs. Margaret Kinder.)

Q. What was his reply as you recall it, Mrs. Kinder?

A. Well, he said he was a German. I believe he told me his mother was there and he wanted to go back and see his [131] mother; and that he really didn't fit in this country so well. He was lonely here.

Q. Did he say anything about the war, the conduct of the war by Germany in connection with his return?

A. Will you repeat that, please?

Q. Yes.

Did you have any conversation with him at this time concerning the war which Germany was engaged in?

A. I stated to him if he went to Germany he would have to participate in the war.

Q. What did he say, if anything, to that statement?

A. He told me he fought for Germany in the other World War and that he would again.

Q. Did you have any conversation with him concerning the political system in this country at that time, Mrs. Kinder?

A. I don't remember if it was at that time or at a later time. I couldn't tell you which time it was.

Q. I see. Well, I will come to that later in the event you are not certain.

Did you have any discussion with him concerning his business experience in Long Beach, his

(Testimony of Mrs. Margaret Kinder.)

success in business, let's put it that way,—in Long Beach?

A. Yes, sir. He told me that he had been very successful in Long Beach; that he had made a lot of money.

Q. Did you have any conversation with him concerning [132] the cause of his making the money, the reasons for it?

A. Yes. I believe he told me he made his money from oil.

Q. I see.

Is that all that you recall of his conversation concerning his success in business?

A. (Pause)

Q. Let me ask you this: Did he attribute his success to any particular thing?

A. Yes, sir, he did.

Q. What did he say?

A. He told me he had studied soil and that when he saw the land down there where his property now is that he was sure there was oil there.

Q. Did you have any subsequent conversations with him at any other time?

A. Oh, yes.

Q. When was the next time you had a conversation with him concerning the same things you have discussed here if you did have another one on those subjects?

A. It was some time before he talked any more on those subjects. I have talked to him a great many times, but it is possibly a year later——

(Testimony of Mrs. Margaret Kinder.)

Q. I see.

A. ——that I talked to him again.

Q. Where did this conversation take place that occurred [133] a year later? A. In his home.

Q. His home? A. Yes.

Q. Were there just the two of you there?

A. My husband was with me.

Q. That would be in the early part of 1941?

A. No, that wasn't in the early part of '41. I would say it was along in April, perhaps March or April.

Q. Now, to the best of your ability, will you tell us what that conversation was, Mrs. Kinder?

A. Yes. My previous conversations with him I had told him that we were paying quite a little rent for the building that we occupied and he mentioned that he was interested in getting a little revenue from his property which is about a block from the building we rent and that if it could be worked out he would like to build a building for our business with an apartment above and give us a long lease on the property, and he would also like to lease us the apartment that he occupies.

Q. Now, other than the discussion concerning the projected business deal did you have any further conversation with him?

A. Yes. He said the reason he wanted to do that—he again asked us to lease his apartment because he wanted to leave the country, but at this time he didn't tell me he [134] wanted to go to Germany.

(Testimony of Mrs. Margaret Kinder.)

Q. Was that the substance of the conversation at that time?

A. Oh, no; we talked about other things.

Q. What did you talk about?

A. Well, he told us that he was dissatisfied with the political situation and that Hitler did have a plan for the world and he thought it was a good plan.

Q. Was that about the substance of that conversation?

A. Oh, no; we talked about other things, too. He showed us through his apartments and we talked in his yard for some little time.

Q. What I mean is, did you have any other conversation concerning matters with respect to which I have interrogated you, Mrs. Kinder?

The Court: World affairs.

Q. By Mr. Dean: World affairs, yes.

The Court: Something like that, Mrs. Kinder.

The Witness: Yes, he did say that the Jews were getting in control of our country and that Hitler had a good plan in regards to the Jews. He had run them out of Germany and it would be well if they could be run out of our country, too.

Q. By Mr. Dean: Did he say anything else that you recall?

A. Well, he mentioned the political system. However, he talked a little more to my husband than he did to me. I [135] was there, but on this particular night the mosquitoes were very bad.

Q. Did you hear any of the conversation between

(Testimony of Mrs. Margaret Kinder.)

your husband and Mr. Bergmann that you haven't told us concerning world affairs or conditions in this country?

A. Well, I gathered from the conversation he was dissatisfied with the political situation in our country and also with our association with England. We were at that time sympathizing with England a good deal and he was against that.

Q. Now, do you think you have told us about the substance of the conversation?

A. Well, I believe I have.

Mr. Dean: I see; that is all the direct examination, your Honor.

The Court: Cross-examine.

Cross Examination

Q. By Mr. Jacobson: Did you make any written notes of these conversations? A. Oh, no.

Q. When was the first time you recalled them to mind after you had them?

A. Will you repeat that, please?

Mr. Jacobson: Will you read the question, Mr. Reporter.

(Question read by the reporter.)

The Witness: I recalled them to mind right away and I [136] went back over to the market and told my husband and his brother.

Q. Well, after you told your husband and your brother—that was the same day? A. Yes.

Q. When was the next time you thought about the conversations?

(Testimony of Mrs. Margaret Kinder.)

A. Oh, I couldn't tell you when I next thought about the conversations, but I thought about it a good many times when I would see Mr. Bergmann. I thought to myself, "I believe that you are a German sympathizer."

Q. These conversations made you feel bitter towards Mr. Bergmann? A. No, sir.

Q. Pardon me? A. No, sir.

Q. But you did feel he was disloyal?

A. Well, there was a little doubt in my mind as to his loyalty to this country, yes.

Q. Now, all of these conversations occurred before the United States was at war?

A. Yes, sir.

Q. Now, isn't it a fact, Mrs. Kinder, that the feeling you had was this: As between England and Germany, he was definitely pro-German on that? A. No. [137]

Q. Who did you think he was for in the war before we got into it? A. Germany.

Q. That is right; and he was very anti-British?

A. And also dissatisfied with our country.

Q. And he didn't like——

A. The way it was being run.

Q. Did he specify?

A. Yes, I believe he did.

Q. Well, was he opposed to President Roosevelt's policies?

A. He mentioned the war debt; that England hadn't met her war debt in the other war.

Q. And he thought she should?

(Testimony of Mrs. Margaret Kinder.)

A. Oh, yes.

Q. Was anything said about the effects of the Versailles Treaty?

A. No, I don't recall that.

Q. Was there any discussion about a proposed plan to unite England and the United States into one nation with one government?

A. I don't recall.

Q. Now, you haven't talked with him, as I understand it, since December 7, 1942, have you?

Mr. Dean: You mean 1941, counsel?

Q. By Mr. Jacobson: You haven't talked with him, as [138] I understand it, since December 7, 1941, have you? A. Oh, yes.

Q. Did any of these conversations occur after that? A. Pardon me?

Q. Did any of the conversations you gave on direct examination occur after the United States entered the war? A. No, sir.

Q. Now, was anything said in these conversations about the Jews, Mrs. Kinder?

A. Yes, sir.

Q. What did he say?

A. Well, I believe he mentioned that the Jews were monopolizing business and that if they were taken out of the country we would get along better, something of that sort.

Q. When he used the phrase "our country"—did he use the phrase "we would be better off if they were out of our country"?

A. I don't know.

(Testimony of Mrs. Margaret Kinder.)

Q. I understood you to say that on direct examination.

A. I couldn't repeat Mr. Bergmann's words.

Q. Have you lived down there in the neighborhood where Mr. Bergmann has for any length of time?

A. I don't live there now, but I did live there for a year and two months.

Q. Had he completed the building of his apartment house when you moved down there? [139]

A. What apartment house do you refer to?

Q. Oh, those 7 or 8 apartments on West Seaside.

A. They were completed before I moved down there.

Q. And the place was all landscaped before you moved into the neighborhood?

A. Well, it was a nice-looking place. I don't know what improvements you refer to.

Q. Well, you know the place at 1245 to 1255 West Seaside Boulevard in the city of Long Beach, do you not? A. Yes, I do.

Q. There are 8 white stucco apartments there?

A. Yes.

Q. And they sit upon about six lots?

A. Yes, sir.

Q. Now, when you moved into the vicinity of that address, were the apartments and garages completed? Had they been built? A. Oh, yes.

Q. So you don't know anything about the improvements he had put on the property himself?

(Testimony of Mrs. Margaret Kinder.)

A. Prior to that, no, I don't.

Q. This discussion about putting up a building for you and your husband's butcher shop, did you say?

A. Yes, we have a small wholesale meat business.

Q. Those negotiations were never completed?

A. No, sir. [140]

Q. You didn't have the building built or you didn't lease the apartment? A. No.

Q. Now, in speaking of service in World War I did he ever mention anything about his family?

A. I believe he told me on more than one occasion about his mother, but I don't recall any other members of his family being mentioned to me.

Q. Do you recall him stating that she was very old and he hoped he could go and see her before she died?

A. I don't know as he mentioned her death, but I believe he told me his mother was very old and she meant a great deal to him.

Q. Do you recall how long a term lease he had in mind for the apartment if he was to lease that building to you? Or were you to buy that?

A. Well, he talked to my husband more about that than he did to me, but I believe he was to retain the ownership of the building. I believe he mentioned he would give us a lease for as long a time as we wanted.

Q. That was on the butcher shop?

A. Yes.

(Testimony of Mrs. Margaret Kinder.)

Q. Did he give you any estimate or make any suggestion about the term of the lease on the apartment house?

A. Yes, he did; but I wasn't at all interested in the apartments and I didn't pay a great deal of attention to it. [141] I have no interest in rentals at all.

Q. Your full time is occupied working in your husband's butcher shop? A. Yes, sir.

Q. And I presume in keeping house also?

A. Yes, sir.

Mr. Jacobson: That is all.

Mr. Dean: No redirect examination, your Honor.

The Court: On these various occasions when you discussed world affairs, who brought up the subject?

The Witness: Mr. Bergmann.

The Court: All right.

(Witness excused.)

The Court: We will take a short recess.

(A short recess was taken after which the proceedings were resumed as follows:)

The Court: All right. Let's proceed, gentlemen.

Mr. Dean: Mrs. Huggins, will you take the stand, please?

ANNA HUGGINS,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, testified as follows:

The Clerk: Your name, please?

The Witness: Anna Huggins.

Direct Examination

Q. By Mr. Dean: Mrs. Huggins, you are the wife of [142] the Mr. Huggins who testified this morning in this case. Is that right?

A. Yes, sir.

Q. And you live in Long Beach, do you?

A. Yes, sir.

Q. How long have you lived there?

A. Two years.

Q. Are you acquainted with the defendant Friedrich Walter Bergmann? A. I am.

Q. Directing your attention to some time early in 1941, Mrs. Huggins, did Mr. Bergmann visit your home? A. He did.

Q. Who was with you at the time of the visit?

A. My mother-in-law. My husband's mother.

Q. Was anyone else there other than Mr. Bergmann? A. And my husband.

Q. And your husband? A. Yes.

Q. Did you have a conversation with him at that time?

A. Not very much. I introduced him to——

Q. Excuse me just a moment, Mrs. Huggins. Can you tell us more definitely when this took place?

A. In the spring of '41.

(Testimony of Anna Huggins.)

Q. All right; now, will you tell us the conversation you had with him, if any, at that time? [143]

A. My mother-in-law was there and I introduced Mr. Bergmann to my mother-in-law. Her name was Duell. He said to her—started to talk German to her and she said, "I don't speak German."

"You are French, maybe?"

"No, just plain American."

He said, "I am a Nazi."

Q. That is the substance of what you heard him say? A. That is all.

Mr. Dean: That is all the direct examination, your Honor.

Cross Examination

Q. By Mr. Howser: Was he smiling or did you observe his appearance at that time?

A. I really didn't because he was speaking to my mother-in-law.

Q. You cannot say whether or not he was merely jesting?

A. Whether he was serious or not I don't know.

Mr. Howser: That is all.

The Witness: Thank you.

(Witness excused.)

The Court: Call your next witness.

Mr. Dean: Mr. Williams, will you take the stand, please? [144]

J. M. WILLIAMS,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, testified as follows:

The Clerk: Please state your name.

The Witness: J. M. Williams, W-i-l-l-i-a-m-s.

Direct Examination

Q. By Mr. Dean: Mr. Williams, what is your occupation?

A. I am vice-president of the Bank of America in Long Beach.

Q. How long have you lived in Long Beach?

A. About 9 years.

Q. Have you been associated with the bank during that entire period of time?

A. Yes, sir.

Q. Are you acquainted with the defendant Friedrich Walter Bergmann, Mr. Williams?

A. Yes.

Q. What is the nature of your acquaintance? A business relationship? A. Yes.

Q. Directing your attention to the year 1940 shortly after the fall of France, did you have a conversation with Mr. Bergmann in your office?

A. Yes, sir.

Q. Were just the two of you present? [145]

A. There were other people in the office, of course, but my conversation at the time was just between the two of us.

Q. I see.

(Testimony of J. M. Williams.)

I mentioned "shortly after the fall of France." Can you fix the date any more closely than that?

A. No, sir, I can't, except that it would have been after the fall of France, probably July and possibly August.

Q. Now, at this time during this conversation did you have a discussion with him concerning world economy? A. Yes.

Q. Will you tell us what the substance or the exact conversation, if you remember, was that you had at that time?

A. Of course, we were all much interested in the war situation at the time and I recall asking Mr. Bergmann how he thought it looked, and he said in his opinion Hitler would be in London about September 15th, and that the war would then be over. And he thought that that would be—these are not exact words; I am not clear as to the words of the conversation—but he thought that was a good prospect, that upon the completion of the war the German plan of world economics would be put into effect.

Q. Did he describe what the plan of economics was?

A. Yes. He told me he thought all the countries of the world would be allotted goods and trade in accordance with their needs; that Germany would be the clearing house and would determine or fix the quotas or needs of the other [146] countries and would see that they got supplies and trade in accordance with such quotas.

(Testimony of J. M. Williams.)

Q. Did he indicate whether or not this quota plan would take in a part or all of the world?

A. Well, I can't say that that point was mentioned specifically. The impression I had was pretty much the whole world.

Q. About this time or during this discussion did you have a conversation with him concerning Adolph Hitler?

A. Yes. It was mentioned. Mr. Bergmann at that time had a good opinion of Hitler. I recall his telling me that he thought Hitler was in reality a good, kind Christian gentleman. He said that Hitler didn't want to harm anybody, only wanted to do good.

Q. Did you have any conversation with him concerning the American Press at this time?

A. In the conversation he said the bad impression that we have in this country of Hitler was due to the misrepresentations of the press in this country. He said the press was controlled by the Jews and that the press was responsible for it.

Q. Did you have any conversation with him concerning the first World War or his service in the First World War?

A. I am not sure. I had several conversations with Mr. Bergmann and I don't specifically recall that he talked about the first World War. [147]

Q. Now, have you ever had a discussion with him concerning war bonds, Mr. Williams?

A. Yes.

Q. Will you tell us what that conversation was?

(Testimony of J. M. Williams.)

A. That was this spring, probably around March, April or May of this year.

Q. I see.

A. He asked me if I was able to tell him whether it was true that the sale of war bonds for the month of March, I think it was, was only half of what it had been for the month of January.

Q. What was his facial expression or demeanor when he asked you that question?

A. Well, I don't particularly recall. He seemed a little disappointed, perhaps, that I didn't know the answer.

Q. I see.

Now, have you had other conversations with him since the attack upon Pearl Harbor on December 7th? A. Yes, I have.

Q. During those conversations did you ever discuss with him the American political system or economic system?

A. Yes, it was discussed in connection with some conversations.

Q. Can you fix the dates of these conversations, the approximate dates for us?

A. No, I couldn't, but—except it would have been [148] presumably along in the first half of this year.

Q. The first half of 1942? A. Yes.

Q. Now, can you give us briefly the conversation that you had or conversations? Were these just between the two of you? A. Yes.

(Testimony of J. M. Williams.)

Q. I see.

A. I am hazy on details, of course. I didn't have these conversations with the thought of needing to remember them nor repeat them.

Mr. Bergmann was a rather critical man, rather critical of our Government or of our plan of government, perhaps I should say, or, at least, the administration of our government.

Q. Did you have any conversation concerning correction in our political or economic system?

A. I think he indicated he thought there was a great deal of corruption in the way we ran the Government.

Mr. Dean: I think that is all the direct examination, your Honor.

The Court: Cross-examine.

Cross Examination

Q. By Mr. Jacobson: Mr. Williams, Mr. Bergmann is quite an extensive depositor in your bank, is he not. [149]

A. Yes; he has had very good accounts there at various times.

Q. And over the years you have known him, has Bergmann been very active in his account, in the way of buying and selling stocks on the Exchange?

A. I think so, yes.

Q. When Bergmann asked you about the volume of war bond sales, had there been some discussion about the market for securities?

A. Yes, I think there had been. I think he did

(Testimony of J. M. Williams.)

say that he was interested in knowing because it might influence his investment attitude or words to that effect.

Q. That is, he was interested in knowing how various stocks and bonds were being bought and sold on the Exchange? A. I presume so.

Q. And the sale of U. S. defense bonds would be a factor in that general financial picture. Is that right? A. Yes.

Q. Now, when you spoke about Hitler being a good, kind Christian gentleman, do you remember the details of the conversation? I mean by that did Bergmann give you a reason why he thought Hitler had been so good in Germany?

A. I don't recall that he did. Of course, Mr. Bergmann didn't just come in to me and voluntarily give all this conversation. It came about by reason of the fact I had, up to that time, enjoyed various conversations with him [150] where I found his viewpoint on some things quite interesting and I asked him questions along these lines. I don't recall that I asked him about Hitler, but I might have done so. I mean, I should have said, I don't recall asking him what he thought of Hitler, but his remarks of Hitler, I am sure, came in connection with the viewpoint or attitude that he had toward the future when he expected the war would be over and Hitler would be in control.

Q. Of course, those conversations, with the exception of the war bond conversation, were prior to the United States' entry into the war?

A. Yes, sir.

(Testimony of J. M. Williams.)

Q. The war bond conversation was had this spring: I take it, a few months after Pearl Harbor? A. That is true.

Q. Now, in giving his views on the administration during the past few years, has the question of so-called New Deal administration come up many times in your conversation with Mr. Bergmann?

A. I should say several times.

Q. It is true, is it not, that he was frankly critical of the administration as such?

A. Yes.

Q. Did he ever give you any reasons?

A. Not that I can specifically recall now. I think he must have indicated reasons, perhaps like most any critic [151] would do in such a conversation, but I don't specifically recall.

Q. I was wondering if he had pointed out, for example, the spending of money and going into debt as one of his reasons.

A. I think very probably he did. I don't clearly recall any such things.

Q. Did you and Mr. Bergmann ever talk about England, whether he liked England or not?

A. Yes. That was a part of the first conversation that I tried to relate.

Q. I wonder if you would just raise your voice a little, please, Mr. Williams.

A. Yes. I said that was part of the conversation I referred to as having taken place in the summer of 1940. He said, in effect that the winning of the war by Germany would do away with the dom-

(Testimony of J. M. Williams.)

ination by England of the world commerce which he, I think, felt or indicated that he felt that was responsible for much of the ills of the world.

Q. Do you recall any discussion about Hitler's so-called youth movement with Mr. Bergmann? Did that come up in any of your visits?

A. Not that I recall. It might have been mentioned in connection with his expressing his opinion of Hitler being a good man, but I don't recall that that phase was discussed. [152]

Q. Are you sure that Bergmann said Hitler is a good man or that Hitler thinks he is a good man?

A. Well, I wouldn't be too sure. The impression I got was—I know he used the word "Christian" and I recall his saying in effect that he was a good, kind Christian gentleman.

Q. In speaking of Germany being the clearing house for economic conditions or whatever you want to call it, business after the war, do you recall specifically whether he included the United States in that world order?

A. No, I don't recall specifically.

Q. Were you acquainted with Mr. Bergmann at the time he was admitted to citizenship?

A. I don't know just when he was admitted to citizenship. I have known him for some five or six years, I think.

Q. Do you recall Mr. Bergmann ever telling you he had been naturalized in the Federal Court?

(Testimony of J. M. Williams.)

A. I think so. At least, I knew that, learned it from somebody.

Q. Did he make any comment to you as to how he felt about receiving his naturalization papers?

A. No, I don't recall our discussing that subject.

Q. Did you ever visit with him in his home?

A. No, sir.

Q. These visits, then, were with you at your desk as vice-president of the bank? [153]

A. That is right.

Q. I take it most of them were rather short?

A. Yes.

Q. And most of them probably concerned financial matters? A. Oh, I presume so.

Mr. Jacobson: I think that is all, your Honor.

Mr. Dean: No redirect examination, your Honor.

The Court: All right, Mr. Williams, you may be excused.

The Witness: Thank you.

(Witness excused.)

The Court: Call your next witness.

Mr. Dean: Mr. Graham, will you take the stand please?

F. M. GRAHAM,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, testified as follows:

The Clerk: Will you state your name?

The Witness: F. M. Graham.

Direct Examination

Q. By Mr. Dean: Mr. Graham, what is your occupation. A. Police officer.

Q. With the City of Long Beach?

A. Yes, sir.

Q. How long have you been so employed?

A. Approximately 14 years. [154]

Q. 14 years? A. Yes.

Q. Mr. Graham, I am going to ask you to speak a little bit louder so we can all hear you, if you will, please. A. Yes, sir.

Q. Are you acquainted with the defendant, Friedrich Walter Bergmann? A. Yes, I am.

Q. Over how long a period of time have you known him? A. Approximately 4 years.

Q. Now, have you during that time had any conversations with Mr. Bergmann concerning Adolph Hitler? A. I have.

Q. Do you recall the date of the first conversation you had, or the approximate date?

A. The approximate date of his first mentioning Hitler was during the year 1940.

Q. Do you recall what time during the year?

A. No, I do not.

Q. Were just the two of you together?

(Testimony of F. M. Graham.)

A. No, there was another officer with us.

Q. What was the occasion for your being with Mr. Bergmann? Do you recall?

A. We were riding in a radio car and stopped by where Mr. Bergmann was working and had a short conversaion with him regarding conditions in Europe and what he thought about [155] the present conditions just to pass the time away.

Q. It was more or less of a social visit?

A. That is right.

Q. Will you tell us to the best of your recollection what the conversation was that you had concerning Hitler?

A. He said Hitler in his opinion was a wonderful man and the greatest genius to mankind the world had ever known and would go down in history as such; that he had built the most wonderful military machine the world had ever known and had accomplished many things.

Q. Is that about the substance of your conversation concerning Hitler at that time?

A. As I remember, yes.

Q. Did you have any other conversation at this particular time with Mr. Bergmann? A. No.

Q. You had subsequent conversations with him at various times, did you? A. That is right.

Q. Can you recall the next time you had a conversation with him concerning Adolph Hitler or world conditions or the conditions in this country.

A. In the month of September of 1941 I learned from another party that he wanted to lease his

(Testimony of F. M. Graham.)

property on West Seaside, at which time I contacted him and asked him regarding the lease. In that visit back and forth over a period [156] of time there of about three months we discussed conditions considerably during that time.

Q. Well, now, what conditions did you discuss as you recall now?

A. The condition of the world at war mostly, and the Government.

Q. Do you recall any conversation with him concerning the way this Government was being run? Do you recall anything on that subject?

A. Yes. The thing that impressed me, he said our Government was run by a flock of racketeers and that Roosevelt was a dirty double-crossing son-of-a-bitch; that he had double-crossed the German people and sold them out when he passed the Lend-Lease Bill permitting England to obtain goods from this country.

Q. Did you ever have any conversation with him concerning his service in the first World War?

A. I did.

Q. Do you recall when that conversation took place?

A. That took place during the year 1940, early in the year 1940 but I don't remember just when.

Q. Were just the two of you present?

A. Yes, as I remember, just the two of us. I got out of the car and walked over to talk to him on the lot where he was watering some shrubbery, and the condition of the war was brought up and I

(Testimony of F. M. Graham.)

asked him if he had served in [157] the World War, the first World War, and he said yes, and we exchanged viewpoints on that.

I had spent some time in France myself during the first war and we discussed several things and he informed me at that time that he was a captain in the German army and had served near the Dardanelles on the Turkish border.

Q. Mr. Graham, did you have any conversation with Mr. Bergmann concerning a trip that he was going to make out of the country?

A. That was the reason for wanting to lease this property. He said if he could lease this property to me—that was in December of 1941—that he wanted to leave the United States by at least the first of February. Where he would go from this country, he said, to Hawaii, from there to South America where he figured on renting a boat and a crew. After he did that he was going to visit the South Sea Islands and eventually land up somewhere in South Africa.

Q. During this particular conversation was there any discussion concerning his citizenship papers?

A. Well, yes, we talked to him about his citizenship papers. I asked him about his citizenship papers prior to that he said yes, he had them as a business protection; that it was a good business for him to have his papers so that he might carry on his work; and he did enjoy, he said, the protection this country afforded him.

(Testimony of F. M. Graham.)

Further regarding the citizenship papers, he made the [158] statement he would bless the date when he could tear up his citizenship papers and throw them away, leaving this country and returning to Germany to live like a white man the rest of his life.

Q. When was this statement made?

A. That was made, as near as I can recall, about November of 1941.

Q. Have you had any conversation with Mr. Bergmann subsequent to the attack upon Pearl Harbor on December 7th?

A. Yes. I asked him what he thought about——

Q. Excuse me just a moment. Can you tell us when the first one was, Mr. Graham, if you recall?

A. It was about three days after the Japs had attacked Pearl Harbor.

Q. Three days after the attack?

A. Approximately so.

Q. Where did it take place?

A. In his apartment.

Q. Just the two of you were there?

A. Yes, sir.

Q. Now, will you tell us what the conversation was?

A. I asked him what he thought about it; if he didn't think it was kind of a shady deal.

He said, "No, that was inevitable;" that Japan was bound to enter this war because that would complete the plan for the unity of the Axis powers. [159]

(Testimony of F. M. Graham.)

Q. Was that all he said concerning the Axis powers at that time?

A. He said they would eventually control the entire world and that the reason for Japan making this attack was because they were entitled to all the islands and territory in that portion of the country; that this country had stolen the Philippine Islands from the Spanish Government in the early days and that rightfully that portion of the world belonged to the yellow race and he was glad to see them take it.

Q. Now, subsequent to that conversation which you said occurred about three days after December 7th, namely, December 10th, 1941, did you have any other conversations with Mr. Bergmann concerning world conditions or conditions in this country, or his relationship to this country?

A. Yes. I talked to Mr. Bergmann regarding the revocation of his citizenship papers and he made the statement——

Mr. Howser: Your Honor, may we have the date of this conversation?

The Court: Yes.

Q. By Mr. Dean: Do you recall the date of the next conversation, Mr. Graham?

A. You mean regarding the citizenship papers?

Q. The next conversation you had, yes, with regard to the citizenship papers. When was the next conversation you had regarding citizenship papers? [160]

A. I had asked Mr. Bergmann before—this was

(Testimony of F. M. Graham.)
along in November, I think, of 1941—if he had his citizenship papers.

He said yes, that he had had them for about four years and that he figured it was good business. He more or less left the impression that——

Mr. Howser: Your Honor, we object to any impression he left.

The Court: That is right. It is very important—you have testified in court before—that you give the substance of the conversation. You may have gathered the impression from something he didn't say.

Q. By Mr. Dean: Was there anything said that you have not testified to, Mr. Graham, during these conversations that you have related concerning his citizenship papers? Is there anything he said that you have not told us during these particular conversations?

A. Regarding the citizenship papers, I don't believe there is.

Q. Now, after December 10, 1941, which is the last conversation that you have related to us, have you had any other conversation concerning world conditions or conditions in this country with Mr. Bergmann?

A. Yes. I asked him how he thought the war would go, and he said eventually——

Mr. Howser: Your Honor, may we have the date of this [161] conversation?

The Court: Yes. Give us the date if you can.

(Testimony of F. M. Graham.)

Q. By Mr. Dean: When was this conversation, Mr. Graham? Can you approximate the date?

A. That was possibly in August, I imagine.

Q. Of 1942? A. I believe it is.

Q. I see.

All right; now, will you tell us what was said at that time?

A. He received notice that the FBI were contemplating revoking his citizenship papers. In fact, I had noticed a heading in the newspaper regarding the same. I went down and talked to him about it and he said he didn't give a damn if they did revoke his papers; that it was perfectly all right with him; that he had already sent enough securities to Germany to take care of Walter as long as he lived; and if they confiscated everything he had, that it was all right with him.

The Court: Have you given us the date of that conversation, Officer?

The Witness: That was about August of 1942.

The Court: Let's see. This proceeding was instituted in July, wasn't it?

Mr. Howser: Correct.

Mr. Dean: I believe the complaint was filed in July. [162]

The Court: The complaint was filed July 3rd.

Q. By Mr. Dean: Now, was that the substance of the conversation you had at that time, Mr. Graham?

A. The most important part of it, yes.

Q. Well, now, have you had any subsequent con-

(Testimony of F. M. Graham.)

versations with him following that first conversation? I say, "following that first conversation," the conversation in August, 1942 that you just related. Have you had any other conversations with the defendant?

A. One conversation I had with him was—I don't remember the date, but it was very impressive to me.

Q. Approximately what date?

A. That was in 1940, regarding life in Germany. He said he was born in Germany, educated there and was proud to say that he was a German; that he was a graduate from the University of Bremen, Germany; that he was born of German parentage of great military background, of which he was very proud. He said he hoped some day to return there where he would wed a woman and live like a white man the rest of his life; further stating there was no American woman in his opinion who was fit to be the wife of a real German.

Q. Directing your attention to the month of August of this year, or subsequent to that time, have you had any conversations with the defendant concerning this case? A. Yes. [163]

Q. Since the institution of these proceedings?

A. Yes.

Q. Can you tell us the approximate date of that conversation?

A. About the last time I talked to him was in September, I believe. He asked me if I would

(Testimony of F. M. Graham.)

please forget everything as a special favor to him and as a particular friend——

Q. Excuse me, Mr. Graham. I am going to ask you to speak more clearly.

A. If I would please forget everything that we had ever talked about except one thing that he wanted me to be sure and remember, and that was the fact that after the war is over he wanted to return to Germany and see his mother; and if I would come here and testify to that on his behalf.

Q. Now, was there anything else said about Germany during that conversation?

A. No, nothing that I can remember.

The Court: How did that conversation come up, Mr. Graham?

The Witness: Sometimes I would ask a direct question.

The Court: No, this last particular conversation that you mentioned. Had you mentioned the fact that you might be a witness, or how did the conversation with regard to your appearing in this case come up?

The Witness: I went down and asked Mr. Bergmann how the [164] case was proceeding. If I remember right, I think that was my question to him; or what he knew of the outcome, or what he thought the outcome of the case would be.

The Court: I see.

Q. By Mr. Dean: Now, have you related to us the substance of the conversation on that particular occasion?

(Testimony of F. M. Graham.)

A. As best I can remember, I have.

Q. Have you had any other conversations which followed that? A. No, not that I remember.

Q. Have you had any conversation with Mr. Bergmann at any time with reference to his giving anything to Germany? A. Yes. He said——

Q. Excuse me, Mr. Graham. When did he make this statement to you?

A. This was during the year 1940.

Q. I see.

A. Regarding a communication with his brother in Germany. He said that he had made this communication through the German consul at San Francisco who in turn turned the money and communication over to the Russian consul so it would go to Russia and then from Russia into Germany. That was his mode of communication until Russia entered the war.

Q. Have you ever had any conversation with him at any time concerning his ties, personal ties or feelings, let's put it that way, towards Germany? [165]

A. Feelings towards Germany?

Q. Just a moment. Do you remember the date of the conversation? A. I do not.

Q. Can you fix the year?

A. Approximately 1940.

Q. Were just the two of you talking?

A. There was one time we had a conversation regarding the sinking of the battleship Repulse and

(Testimony of F. M. Graham.)

the Prince of Wales. That was in the presence of my wife.

I asked Mr. Bergmann if he had heard the news and he said, "News of what?"

I said, "It came over the radio that the Repulse and Prince of Wales had been sunk."

He said, "That is just absolutely too good to be true," and he went on to explain the tonnage of each one of these ships, the amount and size of guns they carried and the crew, the displacement which, in my opinion, was——

Mr. Howser: Your Honor, we object to his opinion.

The Court: Yes. Don't give your opinion unless you told him at that time.

The Witness: It was an amazing thing for any man to say.

The Court: Yes, I understand that. Did you tell him so?

The Witness: Yes, I did. [166]

The Court: All right; if you told him so, it is all right. What you thought is not important.

Q. By Mr. Dean: Are you positive the conversation related to the sinking of the battleships Repulse and Prince of Wales?

A. That was the main topic that was brought out at the beginning of the conversation, but it led on into other things.

Q. I am just asking you whether or not you are sure those were the names of the vessels that were discussed during the conversation.

(Testimony of F. M. Graham.)

A. Absolutely.

Mr. Dean: I think that is all the direct examination.

The Court: Cross-examine.

Cross Examination

Q. By Mr. Howser: Mr. Graham, where did this conversation take place concerning the Prince of Wales and the Repulse?

A. It was in Mr. Bergmann's apartment.

Q. What occasioned your being in his apartment at that time?

A. My wife and I were there regarding leasing the property.

Q. In other words, you had been to his property for a period of two years endeavoring to lease his premises? A. I had not—— [167]

Q. How many times would you say you had been there?

A. The only time I talked to Mr. Bergmann regarding the leasing of his property was during the month of October, 1941.

Q. '41? A. Yes, that is right.

Q. Well, now, when did this conversation take place respecting the Repulse and the Prince of Wales?

A. As I recall, it was the latter part of October or the first of November.

Q. What year. A. '41.

Q. And you were there to lease his apartment buildings? A. Concerning that, yes.

(Testimony of F. M. Graham.)

Q. And you did not get to make the lease?

A. Yes, we got a copy of the lease drawn up.

Q. Did you consummate the conclusion of the lease? A. No.

Q. Now, you say that was in '41?

A. It was.

Q. What occasioned your going to his apartment in September of 1942?

A. Regarding the condition that is now being presented before this Court.

Q. How did you happen to go down to see Mr. Bergmann?

A. That was my business if I want to go see him. [168]

Q. On that occasion did you endeavor to borrow $500 from him?

A. I had no occasion to borrow money from Bergmann.

Q. I am asking you now if on that occasion it isn't a fact that you requested him to loan you $500? A. No, absolutely not.

Q. Then what are the circumstances that took you to his home in September of 1942?

A. To visit.

Q. To visit? A. Yes, to ask questions.

Q. You knew the papers and proceedings had been instigated against him to take away his citizenship papers? A. That is right.

Q. And you felt sympathetic toward him, did you? A. Yes and no.

Q. What do you mean by that?

(Testimony of F. M. Graham.)

A. Personally, as far as Mr. Bergmann is concerned, I admire his knowledge of world affairs. As to his American citizenship, I think it is absolutely——

Mr. Howser: We are not interested in what you think and object to it and ask it be stricken.

Mr. Dean: Just a moment, your Honor. He has asked for an expression of sympathy.

The Witness: He asked what I thought of him.

The Court: I think the answer so far as given may stand, [169] but anything further should not be stated. Ultimately we have to judge him by his acts and not by the impressions he may have created by his acts on others.

Q. By Mr. Howser: Mr. Graham, did you go down there to ask Mr. Bergman certain questions in September of 1942?

A. I went there to visit.

Q. Did you go to ask him certain questions?

A. I answered that.

Mr. Howser: Your Honor, I don't believe the witness did answer it at all.

The Court: You may answer.

The Witness: Yes, I went there to ask him certain questions.

Q. By Mr. Howser: Who sent you there to ask these questions? A. Nobody.

Q. At that time Mr. Bergmann did tell you the reason he wanted to return to Germany was because he had an elderly mother there and he wanted to see her?

(Testimony of F. M. Graham.)

A. He asked me if I would testify to that.

Q. Had he previously told you that he wanted to return to Germany? A. Yes.

Q. And isn't it a fact that he told you the reason he wanted to go there was to see his elderly mother?

A. The only time I ever heard Mr. Bergmann mention [170] his mother, as I told you, was at one particular time when he asked if I would testify in his behalf, at his request.

Q. And he also told you that he had been an officer in the German army during the first World War? A. Yes.

Q. And he told you other things about his service down in the Dardanelles. Is that correct?

A. No. He spoke very little of his service in the Dardanelles; just the location and the rank he held in the army.

Q. Did he tell you he graduated from the university in Germany? A. He did.

Q. Did he tell you what degree he received?

A. He did not.

Q. Now, I also understood that you went down during the month of August, 1942, to discuss this present case with him. A. That is correct.

Q. In other words, after you determined that Mr. Bergmann was in this difficulty you went on two occasions to his apartment to visit and discuss the case with him?

A. I might have went there on three occasions. I don't remember. Two or three or maybe four.

(Testimony of F. M. Graham.)

Q. Two or three or four times you went back to his home to discuss this case with him? [171]

A. That is right.

Q. Now, you say you have told us the most important part of these conversations. Can you please tell us what other conversations you had with him in August of 1942; what was said?

A. I don't remember everything that was said.

Q. The only thing that you do remember is what you termed "The most important part"?

A. That is right.

Q. I will ask you if it isn't a fact, Mr. Graham —excuse me, your Honor.

(Conference between counsel.)

I will ask you whether or not on this occasion in August you endeavored to obtain a loan from Mr. Bergmann.

A. May I ask you a question, Mr. Howser?

The Court: No, no. You have answered that. The witness has already answered it.

The Witness: I have never tried to borrow any amount of money from Mr. Bergmann at no time.

Q. By Mr. Howser: You had occasion to be in his apartment where he lives, you say?

A. That is right.

Q. Can you describe it for us?

A. Yes. It is a single apartment with a living room, a kitchen, a bathroom and a clothes closet.

Q. Has he got a rug on the floor? [172]

A. No.

(Testimony of F. M. Graham.)

Q. Does he sit on a box or a chair when he eats?

A. He sits on a home made bench or stool affair.

Q. Can you describe what he sleeps on?

A. He sleeps on a pull-out bed.

Q. Now, you have had occasion to be in his apartment approximately how many times?

A. All told I expect I have been in his apartment at least a dozen times.

Q. Have you ever seen any German literature, magazines or newspapers in his apartment?

A. I have not.

Q. Have you ever gone to him for advice on investments in the stock market.

A. He voluntarily gave me advice. I didn't ask for it.

Q. Did you ever discuss with him the investment of your money in the stock market?

A. Yes.

Q. And you told him you had $6,000 that you wanted to invest?

A. I didn't say I wanted to invest it. He asked me how much I could invest.

Q. And you said $6,000?

A. Approximately.

Q. Do you recall what he told you to invest it in?

A. Yes, in Pullman stock and Standard of New Jersey. [173]

The Court: When was the date of this advice?

The Witness: I don't remember the date of the advice, your Honor.

The Court: Well, I mean the year.

(Testimony of F. M. Graham.)

The Witness: That was in '41.

The Court: All right.

Q. By Mr. Howser: Now, I understand that you had a conversation with him in December of 1941 and he informed you at that time he was going to take a trip.

A. That was the reason for making this lease, yes.

Q. And he was going to Hawaii, to South America; take a trip; isn't that right?

A. That is right.

Q. And he was getting a crew of scientists and archeologists and other men together to go on this trip with him?

A. His crew was coming from South America. He was to go to that point alone, but there he would pick up his crew.

Q. You knew at that time that he professed to be an archeologist of some note, did you not?

A. Yes, sir.

Q. Was there any reference made that he was going to go to Germany in this boat?

A. Eventually.

Q. Eventually? [174] A. Yes.

Q. What did he say?

A. He said he would first go to Hawaii, from there he would go to South America where he would obtain this boat and crew, and go from there to the South Sea Islands, eventually into Africa and finally on to Germany.

(Testimony of F. M. Graham.)

Q. What did he tell you he was going to do in the South Sea Islands, if anything?

A. Go on a trip regarding scientific archeology.

Q. Then what?

A. I don't know what he was going to do after that.

Q. What he was going to do after that you don't know? A. I do not.

Q. I believe you testified that Mr. Bergmann said our Government is run by racketeers and Roosevelt has sold the people out by the Lend-Lease.

A. That is right.

Q. Did you have occasion to hear any discussion or read in the papers any discussion about the Lend-Lease issue as it came up before Congress?

Mr. Dean: I object to that as being immaterial, your Honor.

The Court: Well, go ahead. You may answer.

The Witness: I have read the papers and did read the papers regarding that; but I am in no position to talk [175] intelligently on the subject.

Q. By Mr. Howser: You know and did know at that time that there was a great deal of opposition in this country to the Lend-Lease?

A. Yes, sir.

Q. Now, the first conversation that you had with the defendant, Mr. Bergmann, was during the year 1940? A. Yes, sir.

Q. And you and a fellow officer were patrolling the harbor area in a radio car, were you?

A. That is right.

(Testimony of F. M. Graham.)

Q. You merely pulled up and stopped and started a conversation with Mr. Bergmann?

A. That is right.

Q. Just to pass the time away?

A. That is right.

Q. Did you have any previous knowledge of Mr. Bergmann or his beliefs at that time?

A. The man I worked with had known Mr. Bergmann a couple of years before I did and he told me a great many things about him, about his knowledge of world affairs and what was going on in the world. In fact, he admired his ability for knowing what the condition of the world was, and for that reason he drove around and introduced me to Mr. Bergmann. That is how the conversation started.

Q. Did he tell you when he pulled up there that you [176] would possibly have a lot of fun talking to this man a little while?

A. Not "fun," no; admiration for the man's knowledge of world events.

Q. When you heard him at that time state that this man Hitler was a great genius, in that particular conversation did he express himself in his belief and as a basis for it that it took a great man to build Germany back from the country it was at the end of the first war?

A. No, he didn't state in that many words, but that is the impression a person would get from the facts of the situation.

Q. In other words, he had great belief in Hitler

(Testimony of F. M. Graham.)

because of his ability to bring Germany back in as a nation? A. That is right.

Mr. Dean: I object to that as calling for a conclusion.

The Court: That is a speech.

Mr. Howser: I will withdraw it, your Honor.

The Court: All right.

Q. By Mr. Howser: Mr. Graham, did you make any report of these circumstances to anybody, referring to the contents of your conversation in 1940?

A. To anybody?

Q. Yes.

A. I might have talked to a number of people about it.

Q. Did you ever file any report on this conversation [177] with the Long Beach police department?

A. I did not.

Q. Did you file with any other law enforcement agency a report on this conversation?

A. I was asked questions regarding it. I didn't file any personal affidavit, no.

Q. When were these questions asked?

A. I don't remember the exact date.

Q. Well, before or after the filing of this proceeding? A. During the month of April.

Q. 1942? A. Yes.

Q. And those questions were asked by the agents of the Federal Bureau of Investigation?

A. Those questions were asked me by Mr. Casey of the FBI.

Q. For the purpose of the record Mr. Casey to

(Testimony of F. M. Graham.)

your knowledge was an agent of the Federal Bureau of Investigation? A. That is right.

Q. And up to that time you did not report to any law enforcement department or elsewhere any of the contents of these conversations?

A. I did not.

Mr. Howser: That is all.

Mr. Dean: Just one question on redirect, your Honor. [178]

Redirect Examination

Q. By Mr. Dean: Mr. Graham, on cross examination in response to a question by Mr. Howser you stated that Mr. Bergmann said that when he was going to take this trip in his boat to South America that he was going to go to Germany eventually. Is that correct? A. That is right.

Q. Is that the way Mr. Bergmann said it, or did he elaborate in any way?

A. That is the way he said it; that he would eventually land at his home in Germany.

Q. Did you ever have any discussions with any other law enforcement officers, conversations concerning Mr. Bergmann subsequent to your first conversation?

A. Merely conversation; no record was ever made of it.

Q. But you have had conversations with other law enforcement officers? A. I have.

Mr. Dean: That is all.

Mr. Howser: May I ask one further question?

The Court: All right.

(Testimony of F. M. Graham.)

Recross Examination

Q. By Mr. Howser: Mr. Graham, you say that Mr. Bergmann told you that he would eventually, upon the conclusion of this scientific trip, go to Germany? [179] A. That is right.

Q. Did he at that time tell you the purpose of going to Germany? A. No, he did not.

Mr. Howser: That is all.

Mr. Dean: That is all.

The Court: All right.

(Witness excused.)

The Court: And call your next witness.

Mr. Dean: Mr. Vaughn, will you take the stand, please?

The Court: No one seems to be answering to that name. Did he hear you?

Mr. Dean: Is Mr. Vaughn here?

(No response.)

He should be here, your Honor.

The Court: Is he the other officer?

Mr. Dean: No, he is not the other officer.

The Court: All right.

Mr. Dean: Mrs. Thiessen, will you resume the stand?

EMMA V. THIESSEN,

a witness called by and on behalf of the plaintiff, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination

Q. By Mr. Dean: Mrs. Thiessen, you testified during [180] direct examination this morning concerning a conversation you had with Mr. Bergmann. I believe it was the only conversation you ever had with him.

A. I never met him but the one time.

Q. Is there any portion of the conversation which you testified to this morning which you have not related to the Court? A. Yes, there is.

Q. All right. A. When——

Q. Excuse me just a moment.

Mr. Jacobson: May I ask what recalled it to her mind?

The Witness: Pardon me?

The Court: That would be proper cross examination, Mr. Jacobson. She may answer.

The Witness: I asked Mr. Bergmann if he sold the property I was looking at, if he got all that money and he went back to Germany, as he said he intended to do, if they wouldn't confiscate his money. He lit right up and said, "They could do a lot of worse things to me than that."

Q. That is the substance of the conversation?

A. That is all the conversation we had.

Mr. Dean: That is the only additional testimony, your Honor.

(Testimony of Emma V. Thiessen.)

Mr. Jacobson: Just a moment. [181]

Cross Examination

Q. By Mr. Jacobson: What recalled this conversation to you this afternoon? A. What?

Q. What recalled this conversation to you this afternoon?

A. I just got out of a sick bed, and that was the rest of our conversation.

Q. What recalled it to your mind?

A. Just because I knew it.

Q. Well——

A. Nothing recalled it to me, only I just knew I had forgotten part of it.

Q. Did you look at some statement you had previously made?

A. No, I didn't have any statement, no, sir.

Q. Did you talk to somebody who reminded you of it?

A. No, I was at lunch, having my lunch, when I thought about it.

The Court: It just came to you?

The Witness: It just came to me. I just got out of the sick bed. I have the flu and maybe you will catch it.

My husband wanted me to send in word that I couldn't come, but I didn't want to do that.

Q. By Mr. Jacobson: Did Mr. Bergmann elaborate on what would be done? [182]

A. He said—that is all he said, "They could do a lot of worse things than take my money."

(Testimony of Emma V. Thiessen.)

Q. Did he say anything about the fact that he had evaded military service in Germany?

A. He said that he had been in the German army for three years and that he wanted to go back. I testified to that this morning, you will remember.

Q. But he didn't tell you that he had evaded military service?

The Court: Let's not go into that. The only object is to discuss this particular statement.

Q. By Mr. Jacobson: He didn't elaborate on the statement that they could do worse than take his money away from him?

The Witness: Yes, if he went back with his money.

Br. Jacobson: That is all.

Mr. Dean: May I ask one question on redirect, your Honor?

The Court: All right.

Redirect Examination

Q. By Mr. Dean: It is true you brought that omission to my attention?

A. Yes, I did.

Q. I see.

A. I was at lunch and I said to myself that I had forgotten to state one of the most important things that [183] happened.

Mr. Dean: Your Honor, there are two witnesses who have not appeared as yet, and in their absence I would ordinarily call on the FBI agent but his testimony is rather lengthy.

The Court: I think you have made good progress

(Testimony of Emma V. Thiessen.)

today. We kept late hours yesterday and I have no objection to adjourning at this time.

Let's see; in addition to the agent you have how many additional witnesses?

Mr. Dean: I have approximately three other witnesses at the most, possibly only two.

The Court: So you will probably conclude the examination in the morning?

Mr. Dean: Yes, about 11:00 or 11:30.

The Court: All right, we will take an adjournment until tomorrow morning at 10:00 o'clock.

(Whereupon, at 4:50 P.M. an adjournment was taken until 10:00 A.M., Wednesday, November 18, 1942.) [184]

Los Angeles, California,
Wednesday, November 18, 1942
10:05 A.M.

The Court: Are there any ex parte matters?

(No response.)

Cause on trial.

Mr. Dean: Mr. Vaughn, will you take the stand?

M. D. VAUGHN

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: M. D. Vaughn.

(Testimony of M. D. Vaughn.)

The Clerk: V-a-u-g-h-n?

The Witness: That is right.

Direct Examination

By Mr. Dean:

Q. Mr. Vaughn, where do you live?

A. Long Beach.

Q. What is your occupation?

A. Deputy building inspector.

Q. For the city of Long Beach?

A. Yes, sir.

Q. How long have you lived in Long Beach?

A. 22 years.

Q. Are you acquainted with the defendant Friedrich Walter Bergmann? A. Yes, sir. [186]

Q. How long have you been acquainted with him?

A. About 14, 15 years.

Q. Directing your attention to the year 1929 did you have a conversation with Mr. Bergmann relative to the German Army? A. Yes.

Q. Where did that conversation take place?

A. On a construction job that he was having built at that time.

Q. Were just the two of you involved in the conversation that you recall? A. Yes.

Q. Will you tell us what the conversation was?

A. Oh, he states at that time that he had served a time in the German Army prior to or during the last World War and that he had a brother who was a commander in the army of some description. I don't know whether it was the artilery or not, but some part of the German Army.

(Testimony of M. D. Vaughn.)

Q. Subsequent to that time, and directing your attention to a time approximately a year later, did you again have a conversation with Mr. Bergmann?

A. Yes.

Q. Where did that take place?

A. On the building that he was doing some more work on, the same location.

Q. Will you tell us what that conversation was, if you [187] recall it?

A. Well, the conversation at that time, he made the statement that his brother was a commander of a German submarine at that time.

Q. Now, directing your attention to a time approximately a year ago, did you have occasion to have a conversation with Mr. Bergmann?

A. Yes.

Q. Can you fix the time any more definitely than that?

A. Well, it was along about the first of last November.

Q. Where did this conversation take place?

A. In the office of the Building Inspector of the City of Long Beach.

Q. Will you describe for us the circumstances under which you saw Mr. Bergmann at that time?

A. Well, he had some literature that he was passing out, Lindberg and Wheeler literature.

Q. Did you see it yourself? A. Yes, sir.

Q. I see.

A. And that is about the conversation that followed.

(Testimony of M. D. Vaughn.)

Q. Did he approach you?

A. He came up to the counter.

Q. And then the conversation followed. Is that right? [188] A. That is right.

Q. Now, will you tell us what the conversation was?

A. Well, he predicted the war wouldn't last more than one more year providing the United States stayed out of it.

I asked him why he thought it would end so quickly, and he made the statement that, "We—Hitler will use gas and wind it up quick."

Q. Are those the exact words that he used

A. Yes, sir.

Mr. Dean: I think that is all the direct examination, your Honor.

Cross Examination

By Mr. Howser:

Q. Mr. Vaughn, was there any hesitation between the words "we" and the commencement of the following words "Hitler will use gas"?

A. Well, he said, "We—Hitler will use gas."

Q. Then there was a definite break in his manner of speech between the word "we" and "Hitler"?

A. Well, that is what he said. I can't tell you what the terminology would be. That is the way he said it.

Q. Well, as you have testified, you have put "we," then you have waited some time, and then you have said "Hitler will use gas." Is that the way he did it?

(Testimony of M. D. Vaughn.)

A. He said, "We—Hitler will use gas."

Q. I see. [189]

Now, you say he was passing out literature on Lindbergh and Wheeler. Is that correct?

A. That is right.

Q. What do you mean by that?

A. Little books or pamphlets that were put out at that time.

Q. How many pamphlets did he have?

A. He had one that he gave to Mr. Kennedy and myself to read.

Q. In other words, he didn't have a whole handful or an armful of pamphlets that he was distributing?

A. No, I don't think he did.

Q. He was asking you to read what these particular men were advocating respecting the United States entering the war? A. Yes.

Q. Do you know whether or not that particular piece of literature you refer to was printed by the Government? A. I don't recall.

Q. Now, you say you have known Bergmann for 14 or 15 years? A. Yes, sir.

Q. During that period of time, Mr. Vaughn, do you recall Mr. Bergmann making any statement other than those that you have given that might be considered disloyal to this country? [190]

A. No, I do not.

Mr. Howser: That is all.

Mr. Dean: No redirect examination, your Honor.

The Court: Step down.

(Witness excused.)

The Court: Call your next witness.

Mr. Dean: Mr. Haschkae.

J. E. HASCHKAE

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: J. E. Haschkae, H-a-s-c-h-k-a-e.

Direct Examination

By Mr. Dean:

Q. Mr. Haschkae, what is your occupation?

A. I am retired at the present time; electrical engineer.

Q. Where do you live?

A. 2015 Lotus Avenue.

Q. Long Beach?

A. Long Beach, California.

Q. How long have you lived in Long Beach?

A. I would say about 15 years now.

Q. Are you acquainted with the defendant, Friedrich Walter Bergmann?

A. I lived almost next door to him for about 12 years. [191]

Q. During the time that you have known him, Mr. Haschkae, have you ever observed him upon seeing him for the first time, or upon leaving his presence do anything unusual?

A. You mean in the form of greeting?

(Testimony of J. E. Haschkae.)

Q. Well, yes, if there was anything unusual in the form of a greeting.

A. Maybe about half the time when I met him, which was every three or four days, he would raise his left hand and say, "Heil Hitler."

Q. How many times would you say you have seen him do that?

A. Oh, perhaps in the last 10 or 12 years maybe a dozen times.

Q. Directing your attention to a time approximately five or six years ago, Mr. Haschkae, did you have a conversation with Mr. Bergmann at the time United States sailors were drilling in Long Beach? A. Yes, I did.

Q. Can you fix the date of the conversation any more definitely than five or six years ago?

A. No, I don't believe I can. It may be five or six or even seven years ago when the Navy boys landed on the beach in front of Mr. Bergman's place, and across the street from his place done some drilling in the sand, jumped behind buildings and sand dunes as though they were invading.

[192]

Q. They were holding maneuvers, in other words? A. Yes.

Q. You say this occurred during 1936 or 1937?

A. I would think so, some place around there.

Q. Will you tell us what conversation you had with Mr. Bergmann at that time?

A. It seems like all the neighors were interested in watching the sailor boys drill on the beach

(Testimony of J. E. Haschkae.)

and, of course, I came out too; and when I got to his premises, he was prancing around in his spacious yard with his face very much red and excited, and he took his fist and pounded it upon the fence post of one of his fences and said, "America will be sorry if she interferes with Germany."

Q. Is that the substance of the conversation?

A. I think that is about what it amounted to. Then he pranced away. He was very much afraid he was going to get shot, it looked to me.

Q. Directing your attention to a time during this year, some three or four weeks ago, Mr. Haschkae, did you have occasion to see Mr. Bergmann again?

A. He called on me at my house. He wanted me to testify for him in this case.

Q. Excuse me just a moment. I want you to tell us, if you can, what he said. I assume that is what you are doing. If you are not, will you tell us just what he said to you?

A. He said that he got it from several neighbors that [193] I had made remarks about him being very close-fisted and very stingy; that he swept up coffee off the floor of the roasting place; that he bought five and ten cents worth of fish and five and ten cents worth of meat at a time.

He said he could win this case because it is a peculiar characteristic about him to be very stingy, that that was the way he was born and raised, and that that is all right.

So I brought up several things which happened;

(Testimony of J. E. Haschkae.)

I told him I couldn't swear to all of that, that I would have to add something to it, about the "Heil Hitler" and about America interfering with Germany's business, and so forth.

He cried two or three different times during the conversation and was very much disgusted with me.

Q. Did you receive or did he hand you anything during the course of this conversation?

A. No. I met him later on after he called at my house. He called me on the 'phone and made an appointment to meet him downtown in the park. He had a list of things written out which he read off to me, and I said, "Well, that is all right as far as it goes. You are stingy and close-fisted, but," I said,—well, "sort of miserly."

Q. Excuse me just a moment. Do you remember what was on the list that he gave you?

A. Well, he had about 10 or 15 questions written out there, or answers, rather.

Q. Do you recall what they were? [194]

A. Well, every one was pertaining to the fact that he was stingy, which he admitted was a peculiar characteristic of himself.

Q. Was that the substance of the conversation you had with him? A. Yes, it was.

Q. Have you seen him since that time?

A. No, I never saw him since that time.

Q. Now, you said, I believe, that once he asked you to testify, that you brought up certain things that had happened. A. Yes.

Q. Is that correct? A. Yes.

(Testimony of J. E. Haschkae.)

Q. That you reminded him of certain things that had happened? A. Yes.

Q. What were those things? Will you tell us what you reminded him of?

A. The "Heil Hitler" was one of them and America interfering with Germany in this war; and I said, "You know, you told me one time that you sent your money to Canada for protection; that you didn't want to put it in the bank here," and I said, "Canada may get in the war too, and then what?"

Well, after a while Canada did get into the war, and I asked him what he was doing with his money, and he said he was [195] sending it to Australia. I asked him if he didn't know that Australia was in the war, and he didn't answer, and I never asked him since.

Mr. Jacobson: I move to strike that out.

The Court: That may be stricken.

Mr. Dean: That is all the direct examination.

Cross Examination

By Mr. Jacobson:

Q. With respect to the Lincoln Park conversation—— A. A little louder, please.

Q. With respect to the Lincoln Park conversation, did anything come up about a sale of your property?

A. Yes. I asked him if he didn't want to invest some money before he went away to the evacuation camp and buy my property; that I would sell it to him for $8,000.

(Testimony of J. E. Haschkae.)

He said, "At this time I couldn't be interested in buying any property."

Q. Now, let me understand you. Did you say to him, that, before he went to an evacuation camp, would he like to buy your property?

A. I said that.

Q. You said that to him? A. Yes.

Q. Was your opinion at that time then that he was going to go to an evacuation camp?

Mr. Dean: I object to that as being irrelevant, calling [196] for a conclusion of the witness.

The Court: Objection overruled. You may ask what brought it on. Go ahead. You may answer.

The Witness: I said to him, "You have got a lot of property; maybe you've got a lot of money too. Don't you want to buy my property? I will sell it to you for $8,000."

He said, "At this time with my troubles I couldn't buy any property."

Q. By Mr. Jacobson: Did you say anything about him going to an evacuation camp?

A. Yes. I mentioned that; that it might be all right because he could take care of the property better than he could a bunch of money.

Q. What was the first price you offered him the property at?

A. Oh, maybe 10 years ago I may have offered him the property for $15,000.

Q. I mean the night of this conversation.

A. $8,000.

(Testimony of J. E. Haschkae.)

Q. Then did you later reduce the offer to $7500; the night, I mean, of this same conversation in Lincoln Park?

A. I may have said that I would take $7500 all cash for it. That may be true.

Q. Now, did you come down eventually to $6,000 cash?

A. Not to my memory. I don't think so, no.

Q. He refused the property at any price that you [197] offered? A. That is right.

Q. Did you tell him that you could do him a lot of good in this case? A. No.

Q. Did you tell him to get in touch with you later if he thought it over and reconsidered the matter?

A. No, no; he just called me up and made an appointment to meet me downtown.

Q. Did you tell him you would testify for him if he bought the property?

A. No, I did not.

Mr. Jacobson: That is all.

Mr. Dean: No redirect examination, your Honor.

The Court: All right, step down.

(Witness excused.)

The Court: Call your next witness.

Mr. Dean: Mr. Barber, will you take the stand?

BRUCE G. BARBER

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: Bruce G. Barber. [198]

Direct Examination

By Mr. Dean:

Q. Mr. Barber, what is your occupation?

A. I am a district law officer in the Immigration and Naturalization Service, Los Angeles.

Q. How long have you been so associated, Mr. Barber?

A. I have been in the service 17 years.

Q. The Immigration and Naturalization Service? A. Yes, sir.

Q. Mr. Barber, your title is district law officer. Is that correct? A. Yes, sir.

Q. And prior to the assumption of your duties as district law officer, has it been your duty to take statements from individuals who petition for citizenship in the United States?

A. Yes, it has.

Q. In that connection did you take a statement from the defendant in this case, Friedrich Walter Bergmann? A. Yes, I did.

Q. Do you recall approximately when that statement was taken?

A. Yes, it was in November of 1936.

Q. Where was the statement taken, Mr. Barber?

(Testimony of Bruce G. Barber.)

A. In the Immigration and Naturalization Service office in Los Angeles. [199]

Mr. Jacobson: Will you give me the date again, please?

The Witness: November, 1936.

Q. By Mr. Dean: What were the circumstances surrounding the hearing or the interview you had at that time?

A. At that time Mr. Bergmann appeared with his two witnesses to file his petition for naturalization, and I was the naturalization examiner who took the preliminary statement from him, preliminary to his filing his petition.

Q. You mentioned the term "application." Was that application made on some sort of a document or was it merely verbal?

A. The petitioner, or Mr. Bergmann, had filled out a form which is a preliminary petition for naturalization, and that had been submitted to the Service. At the time he came to file his petition, his answers given on that form which are numbered questions were checked by me under oath.

Mr. Dean: I see.

Your Honor, as soon as counsel has had time to examine the document I will present it to Mr. Barber.

Mr. Howser: Thank you, counsel. (Passing document to Mr. Dean).

Q. By Mr. Dean: Mr. Barber, I show you what appears to be a preliminary form or petition for naturalization, No. 23-29—and the paper is torn so

(Testimony of Bruce G. Barber.)

that I can't see the next digit; the finishing two digits being 24 with a stamp on it bearing the date of September 5, 1936, "Received District Office [200] Los Angeles," and ask you if you have seen that document before? A. Yes, I have.

Q. Is this the document that you saw at the time Mr. Bergmann appeared for an interview at your office? A. Yes, that is correct.

Q. With respect to the writing in black ink on the first and second pages of the document, do you know in whose handwriting that is?

Mr. Jacobson: Do you want a stipulation, Mr. Dean? That is the petition signed by my client. He said that is the one he signed and filled out.

Unless there is some endorsement by the Government, of course——

Mr. Dean: I think I will bring that out in the course of this questioning. Thank you, Mr. Jacobson.

Mr. Jacobson: All right.

Q. By Mr. Dean: With reference to the handwriting on the first two pages, is that in your handwriting?

A. The corrections made are in my handwriting.

Q. Now, directing your attention to Question No. 26 which reads, "If necessary, are you willing to take up arms in defense of this country?" Was the answer to that question given in your presence on this occasion?

(Testimony of Bruce G. Barber.)

A. Yes, Mr. Bergmann was asked this question over again. [201]

Q. By you? A. By me.

Q. I see. A. And he——

Q. Why was he asked the question over again?

A. Because there appeared some entry there which looked to be "No" that had been crossed out before the form had been sent in to our office.

Q. In other words, it appeared to you that the question had been answered "No." Is that right?

A. Yes, that is right.

Q. What followed subsequent to the discovery of "No" in response to that question?

A. When I asked Mr. Bergman the question, I asked him whether he had any objections to bearing arms in defense of the United States, and he said, "No," he didn't; but he wouldn't bear arms in an attack upon Germany.

I asked him if he could not take the oath unqualifiedly, and he said he couldn't. He said he wanted that qualification put in there, and I wrote the qualification in here in pen and ink.

Q. His qualification?

A. Yes. That follows his answer to Question No. 26.

Q. Yes.

The Court: May I see that?

The Witness: Certainly. (Passing document to the [202] Court.)

The Court: All right.

(Testimony of Bruce G. Barber.)

Mr. Dean: Will you read the last answer, please?

The Court: You are going to offer that as it is? Have you a photostat of it, Mr. Dean?

Mr. Dean: I don't have a photostatic copy, no. Do you, Mr. Barber?

The Court: This is very important.

Mr. Dean: May I ask leave to have it photostated after it is offered?

The Court: Yes. This is very important because it is in the handwriting of the person.

Mr. Dean: With leave of the Court, I will have this photostated.

The Court: You had better mark it as an exhibit and withdraw it on substitution of a copy.

Q. By Mr. Dean: Mr. Barber, with reference to that, will you continue to explain what transpired subsequent to your questioning of Mr. Bergmann?

A. There are several questions following Question No. 26, and by the time I had checked off the rest of the questions, Mr. Bergmann then said he wanted to withdraw the statement that he would not be willing to take up arms in an attack upon Germany, so I ran a line through that crossing it out.

Q. Where does that line appear on this document? [203]

A. Following Question No. 26.

Q. And above the word "No"?

A. And above the word "No" following the next sub-question under No. 26.

(Testimony of Bruce G. Barber.)

Q. Did you have any further conversation concerning that question, of that inquiry?

A. Yes, I had quite a little conversation with him at that time.

Q. Do you recall what the conversation was at that time?

A. I asked him whether or not his objections to bearing arms was based upon a religious idea, or whether it was his love of Germany.

Q. Did he reply to that?

A. He said that it would be hard for him to bear arms in an attack upon Germany, but that his objection was not because of any religious scruples.

Mr. Dean: Mr. Jacobson and Mr. Howser, I understand you are willing to stipulate the signature on this document is that of the defendant, Friedrich Walter Bergmann. Is that correct?

Mr. Jacobson: So stipulated.

Mr. Dean: I offer this as Government's first exhibit, your Honor.

The Clerk: Exhibit 1.

The Court: It may be received. [204]

(The petition referred to was received in evidence and marked Plaintiff's Exhibit No. 1.)

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GOVERNMENT'S EXHIBIT NO. 1 52847

11130

Friedrich Walter Bergmann

No. 13 29124

STATEMENT OF FACTS TO BE USED IN FILING MY PETITION FOR NATURALIZATION

My name is [Mr.] Friedrich Walter Bergmann
(Full true name, without abbreviation and other name which has been used must appear here)

1. My present residence is 1255 W. Seaside Long Beach Los Angeles Calif.
(Street and number) (City or town) (County) (State)

2. My occupation is ~~Retired~~ Architect

3. I was born in Walda, Schwarzenburg, Germany on March Sixth 1893 My race is German
(City or town) (Country) (Month) (Day) (Year) (Race)

4. I declared my intention to become a citizen (first paper) on February 2nd 1934
(Month) (Day) (Year)
in the U.S. District Court ~~Court~~ of Southern District of Cal. at Los Angeles
(City or town)

5. I am ~~not~~ married. The name of my wife or husband is ~~—~~

We were married on ~~—~~ at ~~—~~
(Month) (Day) (Year) (City or town) (State or country)

She or he was born at ~~—~~ on ~~—~~
(City or town) (State or country) (Month) (Day) (Year)

arrived in the United States at ~~—~~ on ~~—~~ for permanent
(City or town) (Month) (Day) (Year)

residence, and now resides at ~~—~~ ; was ~~—~~ naturalized
(City or town) (State or country)

on ~~—~~ at ~~—~~
(Month) (Day) (Year) (City or town) (County) (State)

and certificate No. ~~—~~ issued.

I have ~~no~~ children, whose names, dates and places of birth, and places of residence are as follows:

NAME	DATE AND PLACE OF BIRTH	NOW RESIDING AT—

6. My last foreign residence was Revton, a British Columbia Yolds

The place where I took the ship ~~on which~~ which landed me in the United States was San Francisco Calif.
(City or town) (State)

7. The foreign country of which I am now a subject or citizen is Germany

8. I can fluently speak English.

9. I have resided continuously in the United States since July 18 1922 ~~Germany right to leave 19 days~~
(Month) (Year)

10. I have resided continuously in the county where I now live since ~~March 22~~ April 1923
(Month) (Year)

11. I have ~~never~~ previously made petition for naturalization (second paper). If so, it was No. ~~—~~, made in
the ~~—~~ Court at ~~—~~ on ~~—~~
(Name of court) (City or town) (Month) (Day) (Year)
and was not granted because ~~—~~

12. (If you wish to have your name changed, give full name you desire ~~Not~~ Friedrich Walter Bergmann

(Give names, occupations, and addresses of two citizens you expect to bring with you as witnesses when you appear for examination to file your petition. These witnesses must have personal knowledge of your residence in the county at least, and of your character and other qualifications. A foreign-born witness must bring proof of his citizenship).

(1st) Doctor John W. Earl Physician
(Name) (Occupation)
residing at 255 East Ocean Boulevard - Long Beach
I first met this witness on about March 1928
(Month) (Year)

(2d) Thomas ~~Miss~~ Rankin ~~Student~~
(Name) (Occupation)
residing at 953 Park Circle - Long Beach
I first met this witness on ~~July~~ 1934
(Month) (Year)

I certify that the above statement of facts has been read by me and that the statement is true to the best of my knowledge and belief.

10-1-34 Friedrich Walter Bergmann
(Date) (Signature of applicant)

1255 W. Seaside Long Beach.
(Address or place applicant receives mail)

NOTE—Have you inclosed (if required)—
- ✓ DECLARATION OF INTENTION.
- ✓ IMMIGRANT IDENTIFICATION CARD.
- ✓ TWO PHOTOGRAPHS OF YOURSELF.
- ~~MONEY ORDER FOR $2.50.~~

and 3 References.

INSTRUCTIONS TO THE APPLICANT

Pages 1, 2, and 3 of this form must be completely filled out (preferably on a typewriter)

Immigrant Identification Card.—Every alien who entered the United States for permanent residence on the basis of an immigration visa on or after July 1, 1928, should be in possession of an immigrant identification card bearing a number in red ink. If you arrived on or after the above date, you must attach such card to this application, inserting the number thereof in the appropriate blank space on the first page of this form. Your identification card will be returned to you, after it has served its purpose. If you arrived on or after July 1, 1928, and you do not have an immigrant identification card, either because it is lost or destroyed, or you did not receive such card, you should state the facts in Statement No. 12 on the first page.

Photographs.—You are required to send with this application two photographs of yourself taken within thirty days of the date of this application. These photographs must be 2 by 2 inches in size, must not be pasted on a card or mounted in any other way, must be on thin paper, have a light background, and clearly show a front view of your face without hat. Snapshots, group, or full-length portraits will not be accepted. Both of these photographs must be signed by you on the margin and not on the face or the clothing.

Money Order.—If you are not within one of the below classifications you must secure a money order in the sum of $2.50, payable to the order of the "Commissioner of Immigration and Naturalization, Washington, D.C." This money order, which is in payment for the issuance of a certificate of your arrival in the United States, must be attached to this application when you send or take it to the immigration and naturalization office at the address given on the first page of this form. You are not required to send a money order if (1) your arrival occurred on or before June 29, 1906; or (2) your declaration of intention (first paper) is dated on or after July 1, 1929; or (3) you have heretofore filed a petition for naturalization after July 1, 1929; or (4) you are otherwise exempted by law from the requirement for a certificate of arrival.

Date of Your Arrival.—If you do not know the exact date of your arrival in the United States, or the name of the vessel or port, and you can not secure this information by consulting your family or friends who came over with you, give the facts of your arrival as you remember them in the appropriate blank spaces on the first page of this form. If you have a passport, ship's card, or baggage labels, they may help you to answer these questions.

Race and Nationality.—In furnishing information as to your race in Statement No. 3, page 3, "race" is to be determined from the original stock or blood of your ancestors and the language you speak, as distinguished from "nationality," which means the country of which you are a citizen or subject. For instance, a person may be of French blood or stock but owe allegiance to Great Britain. In that case "race" would be French and "nationality" British. For your information there follows a partial list of races or peoples:

African (black).
Albanian.
Armenian.
Belgian.
Bohemian.
Bosnian.
Bulgarian.
Chinese.
Croatian.
Cuban.
Dalmatian.
Dutch.
East Indian.
English.
Filipino.
Finnish.
Flemish.
French.
German.
Greek.
Hebrew.
Hercegovinian.
Irish.
Italian (North).
Italian (South).
Japanese.
Korean.
Latvian.
Lithuanian.
Magyar.
Mexican.
Montenegrin.
Moravian.
Pacific Islander.
Polish.
Portuguese.
Rumanian.
Russian.
Ruthenian (Russniak).
Scandinavian (Norwegians, Danes, and Swedes).
Scotch.
Servian.
Slovak.
Slovenian.
Spanish.
Spanish American.
Swiss.
Syrian.
Turkish.
Ukrainian.
Welsh.
West Indian (other than Cuban).

The term "Cuban" refers to the Cuban people (not Negroes); "West Indian" refers to the people of the West Indies other than either Cubans or Negroes; "African (black)" refers to the African Negro, whether coming from Cuba or other islands of the West Indies, North or South America, Europe, or Africa. Any alien with admixture of blood of the African Negro will be classified under this heading. "Italian (North)" refers to people who are native to the basin of the River Po in northern Italy (i. e., Departments of Piedmont, Lombardy, Venetia, and Emelia) and their descendants, regardless of place of last foreign residence. "Italian (South)" refers to people who are native to that portion of Italy south of the basin of the River Po (i. e., Departments of Liguria, Tuscany, the Marches, Umbria, Rome, the Abruzzi and Molise, Campania, Apulia, Basilicata, Calabria, Sicily, and Sardinia) and their descendants, regardless of place of last foreign residence.

RESULT OF EXAMINATION

TO THE APPLICANT—*Do not* write on these lines

Examiner _____

U.S. GOVERNMENT PRINTING OFFICE 8-10—30651

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Form A-2614
U. S. DEPARTMENT OF LABOR
IMMIGRATION AND NATURALIZATION SERVICE

APPLICATION FOR A CERTIFICATE OF ARRIVAL and PRELIMINARY FORM FOR PETITION FOR NATURALIZATION

No. 23-29.24

For use in searching records of arrival:

RECORDS EXAMINED	RECORD FOUND
Card Index	Place
Index books	Name
Manifests	
	Date
	Manner

Use Form 160-Im in issuing certificate of arrival on this application

(Signature of person making search)

TO THE APPLICANT: Do not write above this line. Read carefully and follow the instructions on last page hereof.

Take or mail this application and your money order to

IMMIGRATION AND NATURALIZATION SERVICE,
Post Office Building,
LOS ANGELES, CALIF.

Date August 28th, 1936

RECEIVED AUG 31 1936 IMMIGRATION OFFICER DEPT. OF LABOR LOS ANGELES

I, Friedrich Walter Bergmann, residing at 1255 W. Seaside Long Beach, desire to file petition for naturalization in the U. S. District Court, Los Angeles, Calif., in accordance with the naturalization law. I submit herewith a statement of facts to be used in filing such petition, two photographs of me, each of which I have signed, and my declaration of intention (first paper) or one required. and 3 official references.

See instructions on page 4 hereof, paragraph entitled "Money Order." If you are not exempted therefrom you must secure a money order in payment for a certificate of arrival and fill in the blank below:

I hereby apply for a certificate of arrival showing my lawful entry into the United States for permanent residence, and inclose money order No. _____ in the sum of $2.50 made payable to the order of the "Commissioner of Immigration and Naturalization, Washington, D.C.," in payment for the certificate of my arrival.

I arrived in the United States at Eastport, Idaho under the name of Friedrich Walter Bergmann, on July 13th 1922 on the vessel via Canad. Pacific Railway.

Additional facts to aid in locating a record of my arrival:

1. I have never used another name in this country than that given above. (If so) It was —
 I used that name because —
2. The full name of the person shown on my steamship ticket was Friedrich Walther Bergmann S.S. Georgic left Feb 11 1911
3. I was born in Walda, Saxony, Germany on March Sixth 1893
4. My father's full name is/was Fedor Nikolaus Edmund Bergmann
5. My mother's maiden name was Flora Adele Trenkmann
6. (If a married woman) My maiden name was —
7. My last foreign residence was Rarotonga, British Cook Islds, as per Permit No. 896355 Ref. # 887355
8. The place where I took the ship or train which landed me in the United States was San Francisco Calif.
9. The ticket on which I came to this country was bought at San Francisco Calif.
10. (If arrival by ship) Name of steamship line was Union S.S. Co of New Zealand
 first, second, or third cabin third I arrived as a passenger, stowaway, seaman, member of crew, or otherwise as a passenger
11. I traveled on (an Immigration visa, a passport, or permit to reenter) Re-entry permit as stated at re #7
12. My original Immigrant Identification Card No. 519325 is hereto attached. If not herewith, it is because
13. I paid $8.00 head tax at U.S. Consulate, Winnipeg (Manitoba) Canada February 14 1922
14. I was duly examined by United States immigration officers at Eastport Idaho
15. (If not examined, state why, and give the circumstances of your entry) —
16. The person in the United States to whom I was coming was my brother Karl Bergmann, Spokane
17. The place in the United States to which I was going was Seattle Wash.
18. The names of some of the passengers or other persons I traveled with are unknown at hand - I know

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GOVERNMENT'S EXHIBIT NO. 1 / 52847

N 8 3

11130

(1) Friedrich Walter Bergmann No. 3 29124

STATEMENT OF FACTS TO BE USED IN FILING MY PETITION FOR NATURALIZATION

My name is (Mr. Mrs. Miss) Friedrich (Walter) Bergmann
(Full true name, without abbreviation, of each and every name which has been used, must appear here)

1. My present residence is 1255 N. Seaside (Number and street) Long Beach (City or town) Los Angeles (County) Calif. (State)
2. My occupation is ~~Student~~ Mechanic
3. I was born in Walda, Schmalkalden (City or town) Germany (Country) on March sixth (Month) (Day) 1893 My race is German (Two races)
4. I declared my intention to become a citizen (first paper) on February 2nd (Month) (Day) 1934 (Year)
In the U.S. District Court of Southern District of Calif. at Los Angeles (City or town) (State)
5. I am ~~not~~ married. The name of my wife or husband is ~~—~~
We were married on ~~—~~ (Month) (Day) (Year) at ~~—~~ (City or town) (State or country) on ~~—~~ (Month) (Day) (Year)
She or he was born at ~~—~~ (City or town) (State or country) on ~~—~~ (Month) (Day) (Year), and arrived in the United States at ~~—~~ (City or town) with ~~—~~ for permanent residence, and now resides at ~~—~~ (City or town) (State or country) on ~~—~~ (Month) (Day) (Year) at ~~—~~ (City or town) (State) (Country) and certificate No. ~~—~~ issued.
6. I have ~~no~~ children, whose names, dates and places of birth, and places of residence are as follows:

Name	Date and Place of Birth	Now Residing at—

7. My last foreign residence was Rarotonga British Cook Islds (City or town) and the place where I took the ship ~~coming~~ which landed me in the United States was San Francisco (City or town) Calif. (State)
8. The foreign country of which I am now a subject or citizen is Germany
9. I can fluently speak English.
10. I have resided continuously in the United States since July 18 1922 (Month) (Day) (Year) ~~(continuously since [illegible] for 19 years)~~
11. I have resided continuously in the county where I now live since ~~December 22~~ April 1923 (Month) (Year)
12. I have ~~never~~ previously made petition for naturalization (second paper). If so, it was No. ~~—~~, made in the ~~—~~ (Name of court) Court at ~~—~~ (City or town) (State) on ~~—~~ (Month) (Day) (Year) and was not granted because ~~—~~

(If you wish to have your name changed, give full name you desire Friedrich Walter Bergmann

(Give names, occupations, and addresses of two citizens you expect to bring with you as witnesses when you appear for examination to file your petition. These witnesses must have personal knowledge of your residence in the county at least, and of your character and other qualifications. A foreign-born witness must bring proof of his citizenship).

(Ist) Doctor John W. Earel Physician (Occupation)
residing at 255 East Ocean Boulevard - Long Beach
I first met this witness on about March 1926 (Month) (Year)

(2d) Thomas ~~Mac~~ Rankin Student Landlord (Occupation)
residing at 953 Park Circle - Long Beach
I first met this witness on ~~—~~ (Month) (Day) 1924

I certify that the above statement of facts has been read by me and that the statement is true to the best of my knowledge and belief.

10-1-34 Friedrich Walter Bergmann
(Signature of applicant)

1255 N. Seaside Long Beach
(Address of street, number, city and State)

NOTE—Have you inclosed (if required)—
✓ DECLARATION OF INTENTION.
✓ IMMIGRANT IDENTIFICATION CARD.
✓ TWO PHOTOGRAPHS OF YOURSELF.
MONEY ORDER FOR $2.50.
and 3 References.

(Testimony of Bruce G. Barber.)

Mr. Dean: That is all the direct examination.

Cross Examination

By Mr. Jacobson:

Q. Were there any subsequent interviews between yourself and Mr. Bergmann in connection with his request for naturalization?

A. No, there were not; not that I recall.

Q. Now, after you had made this examination—I suppose that is the last one before it goes to court, is it?

A. After the form is checked, after the form was checked in this case, then in all cases at that time the preliminary petition form is then given to a stenographer who writes up the information from that form which goes into the petition. That is filed with the Clerk of the Court, and that is the last act that would take place prior to naturalization so far as I was concerned.

Q. Now, is all that information accessible to the United States Attorney and the Court when they pass upon the petition?

A. The Act of Congress provides that the Court may designate an officer to act for the Court in passing upon the petition for naturalization.

The Court: I can settle that by telling you ordinarily we do not see that application at all unless there is some [205] question. The way things are done in this Court, Mr. Barber and others are designated as examiners, and they do all the preliminary work. If they are satisfied that the re-

(Testimony of Bruce G. Barber.)

quirements of the law have been proven, they come into court and recommend.

If a question arises, then they put them on what they call the contested docket. They have no right to reject or admit. They merely recommend. So unless this was put on the rejected docket, which is brought up in open court before the judge who hears naturalization, we never would see this document. So the judge who passed on this naturalization, unless Mr. Barber or somebody else put this on the rejected docket, never saw it.

Mr. Jacobson: That is what I have been trying to find out, your Honor.

The Court: I was going to ask, myself—because I know how it is worked here—why it wasn't put on the questionable docket.

The Witness: I would be very glad to do that, your Honor.

The Court: I wish you would do that because I have had cases which are less borderline than this one brought up before me, and so have the other judges.

The Witness: In reading the MacIntosh decision which we did at that time and also the Bland decision, which are cases involving conscientious objectors, we could see nothing [206] in those two cases which would show this man was unable at that time to take the oath unqualifiedly. The matter of passing upon whether or not the case should be submitted to the Court is done by the designated officer who at that time was Mr. Terrill.

(Testimony of Bruce G. Barber.)

Q. By Mr. Jacobson: Pardon me. Will you spell that? A. T-e-r-r-i-l-l.

And the reason I remember this case is the discussions we had about his answer in that connection.

Q. You did discuss that with this Mr. Terrill?

A. Yes.

The Court: You understand under the MacIntosh case, the Schwimmer case and the Bland case, refusal to bear arms for any reason, even for conscientious scruples, is a ground for denial of citizenship notwithstanding the fact that a native-born may refuse to bear arms. In other words, what those cases taught—in the case of Schwimmer, she was opposed to bearing arms because of her economic belief, and although she was a middle-aged woman the Court held she couldn't take the oath.

In the MacIntosh case, Dr. MacIntosh was a theologian and he said he would bear arms only if the United States was attacked, and the Court said that would disqualify him. The Court has since affirmed the petition.

Didn't you think his statement that he refused to bear arms against a particular country did come within that scope? [207]

The Witness: We have had cases here in court in which a petitioner has stated that he refuses to bear arms because of religious beliefs. Then they talk it over with their minister, for instance, and then come back and reconsider it, and then go into court, and at that time would change their

(Testimony of Bruce G. Barber.)

minds and say they could take the oath unqualifiedly. Those facts are known to the court, and the courts have admitted them. The question we were considering in this case was whether or not he had this doubt at one time during the five years prior to naturalization, he lacked the required attachment during the four or five year period; and we decided at that time that probably his love of country was—he didn't want to give up his love of Germany, but that he did convince us that he was willing to take the oath unqualifiedly.

The Court: All right.

Mr. Jacobson: If you will pardon me just a second, I want to look over this petition.

No further questions, Mr. Barber. Thank you.

Mr. Dean: That is all the direct examination.

The Court: May I see the date of that?

(The document referred to was passed to the Court.)

The Court: Where is the date? Is this the date, Mr. Barber, August 28, 1936?

The Witness: No, your Honor. If I can look at the bottom of the page, it is dated right following his signature, [208] November 5, 1936.

The Court: November 5. And what is the date of the certificate of naturalization?

The Witness: That would be more than 90 days at that time.

The Court: Well, at least that much. Let's see; just to have the date, that is all. April 9th.

(Testimony of Bruce G. Barber.)

Mr. Dean: April 9, your Honor, 1937.

The Court: All right.

(Witness excused.)

The Court: Your next witness.

Mr. Dean: Mr. Casey, will you take the stand?

JAMES D. CASEY

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: James D. Casey, C-a-s-e-y.

Direct Examination

By Mr. Dean:

Q. Mr. Casey, what is your occupation?

A. Special agent with the Federal Bureau of Investigation.

Q. Were you so employed during the months of April and May, 1941? A. I was. [209]

Q. During that period of time did you have occasion to interview the defendant in this case, Friedrich Walter Bergmann?

A. Yes. I believe it was on May 5, 1942, I had the opportunity to talk to Mr. Bergmann at his residence in Long Beach.

Q. Will you tell us briefly what transpired during that interview?

A. Well, at the time of this interview we first questioned Mr. Bergmann about his background.

(Testimony of James D. Casey.)

Q. Excuse me. You say "we." Was someone else with you?

A. Yes, I was accompanied by another agent from the Los Angeles office, Mr. Gibbons, and we questioned Mr. Bergmann about his background in Germany, where he came from, who his parents were, and when he came to this country.

In the course of the conversation and questioning once in a while he would get off from the direct answers to our questions and I remember distinctly on a few occasions he made the remark, "Germany! We are a great nation." And on another occasion he said, "I am proud I am a German."

Q. Now, it is true, is it not, Mr. Casey, that a signed statement was taken from Mr. Bergmann at that time? A. That is true.

Q. And contained in that statement were the statements which have been given by the defendant to you during the [210] course of the interview?

A. They contained most of the statements. Some of the statements we put in the statement he refused to sign, and scratched them off the statement as it now appears signed.

Q. Now, with reference to the statement that you have attributed to him with respect to "Germany! We are a great nation," was that statement included in the signed statement?

A. No, he wouldn't allow that be included in the statement which he would sign.

Q. Now, during the course of that interview did you have any conversation with Mr. Bergmann rela-

(Testimony of James D. Casey.)

tive to his having been approached by officials of the German government?

A. Yes. At the end of our interview with Mr. Bergmann we questioned him about being approached by any members of the German-American Bund or by any agents of the German government.

Q. Did he respond to that inquiry?

A. At first he said that he had not been approached by members of the bund, and then he later recalled that in January of 1937 he was approached by some German whose name he could not give us, who asked him if he could, because of his position there in Long Beach, observe movements of ships and merchandise in and out of the Long Beach Harbor and report that to him, who was a German connected with the German government.

Q. Did you ask the defendant whether or not he reported that to the authorities or to any government agency? [211]

A. Yes. We asked Mr. Bergmann what he had done about this; if he had attempted to report this to any law enforcement agency, and he said he had not.

Q. Do you recall the date, if any, given to you by Mr. Bergmann on which he was approached by these agents?

A. This he stated was in January of 1937.

Q. January, 1937? A. Yes.

Mr. Dean: Counsel is now reading that statement, your Honor.

Q. Did you have any other conversation with

(Testimony of James D. Casey.)

Mr. Bergmann? Were there any other statements made which were not later included in the written statement, or incorporated in it that you recall?

A. Well, he spoke about qualified limited immigration into this country. He found objection to certain races and did not feel they were on an equal basis to the races from the northern part of Germany which he compared to the Teutonic race he found in Germany.

The Court: That isn't anything. The Congress of the United States has sanctioned that distinction by allowing larger quotas from the blue-eyed northerns than the black-eyed southerners.

The Witness: Well, he wanted to prohibit those from the southern part of Europe.

The Court: Altogether? [212]

The Witness: Yes.

The Court: That would be only one step further. Congress preferred blue-eyed blondes to dark-skinned races and, therefore, they eliminated the Balkans, the Italians, and even the French. They limited their quotas in favor of the Norwegians, Danes and Germans and other blondes.

The Witness: That is right.

Q. By Mr. Dean: Did you have any conversation with him concerning war bonds?

A. Yes. We asked Mr. Bergmann if he had been investing any of his money in war bonds.

Q. Did he reply to that?

A. Yes. He said he had not. We asked him further about it, and he said he planned to in the

(Testimony of James D. Casey.)

future, to make some purchases of these defense bonds.

Q. Did you have any conversation with him concerning voting?

A. Yes. We questioned Mr. Bergmann about his citizenship, and he informed us that he had been naturalized in 1937, but that he had not voted in any election.

The Court: Will you read that answer? I was busy getting something from my secretary and didn't get that last answer.

(The record was read.)

Mr. Jacobson: I am sorry to delay your case, but this is a long statement. [213]

The Court: That is all right.

Mr. Dean: I think we are ready to proceed, your Honor.

The Court: All right.

Q. By Mr. Dean: Mr. Casey, I show you what purports to be a statement signed by Mr. Bergmann dated May 5, 1942, and ask you if you have seen that before.

A. Yes. This is the statement which we took from Mr. Bergmann on May 5, 1942, at his residence.

Q. Now, with reference to the signature that appears on the last page, page 9 of the statement, do you know in whose handwriting that signature is? A. Yes, sir.

Mr. Jacobson: We will stipulate that is the signature of Mr. Bergmann.

(Testimony of James D. Casey.)

Q. By Mr. Dean: That was signed in your presence, was it? A. That is right.

Q. Is there any identification or marking on any of the other pages which was put there by Mr. Bergmann, or is that all?

A. Yes. He has placed his initials besides each correction that appears in this statement.

Q. Will you designate them by page number, please?

A. On pages 3, 5, 6, 7, 8 and 9.

Mr. Dean: I offer this for identification only at this [214] time, your Honor.

The Clerk: 2, for identification.

(The statement referred to was marked as plaintiff's Exhibit No. 2, for identification.)

Mr. Dean: That is all of the direct examination, your Honor.

The Court: Cross-examine.

Cross Examination

By Mr. Howser:

Q. Mr. Casey, how long have you been in the F. B. I.?

A. I went on duty with the Federal Bureau of Investigation on October 6, 1941.

Q. Have you had in your experience numerous such cases as this?

A. Will you repeat that, please?

Q. Have you had investigations similar to the one now pending before the court?

A. Yes, I have handled other investigations of this nature.

(Testimony of James D. Casey.)

Q. Now, on May 5, you and Mr. Gibbons went to the home of Mr. Bergmann in Long Beach?

A. That is right.

Q. What time did you arrive there?

A. We arrived there at about noon time.

Q. Do you recall the approximate time when you commenced your investigation and conversation with him? [215]

A. Yes. We started to question him around 1:30, I believe.

Q. Now, where did this questioning take place?

A. It took place in his front room.

Q. Can you describe that for us?

A. Yes. This room is furnished with one bed that was covered up. It looked like a pull-out bed. Several boxes are used for chairs, and there were some papers on the floor.

Q. In your investigation of the apartment did you find any German literature, newspapers, magazines, or pamphlets? A. Not that I recall.

Q. You have none with you today?

A. No, I haven't.

Q. In order that we may get the picture clearly here, who was asking the questions?

A. Mr. Gibbons and I, but I did most of the questioning.

Q. This statement which you have referred to here which has just been marked for identification, in whose handwriting is that?

A. That is in my handwriting.

Q. In other words, as Mr. Gibbons would ask

(Testimony of James D. Casey.)

the questions and Mr. Bergmann would answer the same you would write them down?

A. No, that isn't true.

Q. How did you do it? [216]

A. We interrogated Mr. Bergmann completely and took notes on the answers he gave to our questions, and on completion of this, we took what he had told us and incorporated it into a statement which he later signed.

Q. Where did you write this incorporated statement?

A. I think we wrote this in our automobile. Mr. Bergmann was busy, had something to do, so we told him rather than stay there and tie up his time while we wrote it out, we went back in the automobile and wrote it.

Q. In other words, you preferred immediately to go in your car and write this statement out while these facts were fresh in your mind?

A. That is correct.

Q. And you have read the statement, have you?

A. Yes, I have.

Q. And it is true and correct?

A. That is the statement he signed. That is true.

Q. I say the statements written down by you are true and correct to the best of your knowledge of the contents of the conversation that took place between you three?

A. That is the conversation that he signed to.

(Testimony of James D. Casey.)

That is the only statement he would give that he would sign.

Q. Yes, but the statements that are in there are statements that he actually made? A. Yes.

Q. And best recalled by you that he would agree upon? [217]

A. Those are the statements he made.

Q. Now, about 4:30 in the afternoon did you have any conversation respecting a search warrant?

A. We asked Mr. Bergmann if he would permit us to search his home.

Q. I will ask you if it isn't a fact that Officer Casey—that you told him you did have a search warrant?

A. No, that is not true. We did not tell him that.

Q. Did Mr. Bergmann object to any investigation of the premises?

A. No. He allowed us to search, but—no, he didn't object.

Q. But you went in and out of each and every apartment?

A. Mr. Gibbons did most of the searching.

Q. Were you present?

A. I was present most of the time. I didn't go everywhere Mr. Gibbons went.

Q. Now, during any of the period of time that you were present do you recall of any conversation concerning the reports that you had received that he was leaving these apartments vacant down there in Long Beach for purposes of dressing rooms for

(Testimony of James D. Casey.)

German agents that were coming in and out of the harbor?

A. No, I don't recall anything about that.

Q. You observed the condition of the apartment? [218] A. Yes.

Q. Can you describe that to us?

A. Well, these apartments were small apartments and were furnished but were unoccupied.

Q. Did they have the appearance of being unoccupied for some time?

A. Well, as I recall, they didn't appear as though they had been occupied recently, within a week or two of that time, at least.

Q. Did you have occasion to hear the lady from Long Beach yesterday testify that the apartments were full of moths and——

A. Yes, I did hear that statement.

Q. Did you see that same condition?

A. I noticed the things were pretty dusty.

The Court: I don't think that is material, gentlemen.

Mr. Howser: All right, your Honor.

The Court: I haven't seen a woman yet who couldn't take exception to the way any man who lives by himself takes care of his establishment. She wouldn't be a woman if she didn't. So what difference does it make? He has a right to shut up his place and not rent it to anybody. There is no requirement, even in war time, that property be rented. If the Government wants the property itself, it condemns it. If a man wants to board his

(Testimony of James D. Casey.)

property up and be a Robinson Crusoe, he has a right to do that even in the city of Long Beach. So I don't [219] think we need to pay much attention to what was done in investigating the other matters except, perhaps—well, strike out "except perhaps."

Q. By Mr. Howser: Mr. Casey, you say you had some conversation with Mr. Bergmann respecting war bonds? A. That is correct

Q. What did he say?

A. He said that he had been in the market investing money in war bonds, and we questioned him a little more about it, and he said he planned to in the future.

Q. He did say that he had not purchased any?

A. No, I don't recall that. He did purchase one, I believe. He did say he bought one.

Q. You know as a matter of fact that he did tell you, and put it in the report that he had defense bonds, did you not?

A. I think he said he had one.

Mr. Howser: Do you recall, Mr. Jacobson, what page that is on?

Mr. Jacobson: That is on page 7, I think—no, page 9. I am sorry.

Q. By Mr. Howser: Referring to page 9, Mr. Casey, it says, "I have bought about $1,000 in U. S. defense bonds and plan to buy $1,000 worth every six months." He made that statement, did he not?

A. That he bought a $1,000 bond, as I understand it. [220]

(Testimony of James D. Casey.)

Q. And that he intended to buy $1,000 worth every six months?

A. "A bond" is the way I recall him making the statement.

Q. You wrote down what he said, didn't you?

A. That is right.

Mr. Howser: Your Honor, I would like to request of the Court, and I understand that the Government is desirous too of having this instrument in evidence, and we would like to ask that the same be accepted in evidence in this case.

Mr. Dean: No objection, your Honor.

The Court: All right.

The Clerk: Mark it Government's Exhibit No. 2.

(The document referred to was received in evidence, and marked as Government's Exhibit No. 2.)

GOVERNMENT'S EXHIBIT No. 2

Long Beach, California
May 5, 1942.

(Approved F. W. B.)

I, Friedrich Walter Bergmann, 1255 W. Seaside, Long Beach, California, make the following statement freely and voluntarily to Special Agents James D. Casey and James V. Gibbons of the Federal Bureau of Investigation. No threats or promises were used against me.

I was born in Walda, Saxony, Germany, March 6, 1893, the son of Theodore Edmund Nicolaus

(Testimony of James D. Casey.)

Bergmann and Flora Adele Bergmann. I was educated in Dresden, Saxony, Germany and completed what was the equivalent of a junior college education. On February 11, 1911, I left Germany from Bremenhaven on the S. S. George Washington. I was accompanied by my older brother, Edmund. My destination was Toronto, Canada. The instant ship first stopped at New York City and I was there for about two days. I arrived in Toronto Canada around March 1, 1911. I was employed by Greeff Bredt and Co., Front St., Toronto as chief accountant for 2 years. In 1913 I went to western Canada, to the city of Edmonton in the province of Alberta where I spent 3 years as a (Approved F. W. B.)

prospector. From there I went to Calgary, in the province of Alberta, Canada, where I was employed for 3½ years as the city salesman for the A. B. Cushing Lumber Co. In 1919 I returned to Edmonton where I was the sales executive for the Edmonton Metal Works Limited and remained there until 1922 except for an intervening period of 12 months when I was in Prince George, British Columbia. On July 11, 1922, I entered the United States at Eastport, Idaho. I received a permit from the U. S. consul at Winnipeg, Canada.

After arriving in the United States, I visited my brother Charles in Spokane, Washington, for about 9 months. After that I went to San Francisco for a few months and then to Long Beach, California. In Long Beach, I have invested my money in the

(Testimony of James D. Casey.)

harbor area. I have been living in Long Beach since 1923. I have lived at the Y. M. C. A. and for 7 years at 624 W. 1st St., Long Beach. I have been living at 1255 W. Seaside for the last ~~5 or 6~~ 9 or 10 years.

(2 corrections approved F. W. B.)

I am interested in archaeology and have made several trips on such expeditions. In 1930 I went to the Hawaiian Islands and was there for 14 months. In 1931-32, I went to French Oceania in search of archeological specimens. During this voyage I also visited Tubay Island and Tahiti. I return on November 16, 1932. The following year I went to the British Cook Islands and returned during the first part of 1934. On all these voyages I always sailed from San Francisco on boats of the Union Steamship Co. of New Zealand. ∧ I have not been outside of the United States since that date. I loaned my specimens to Los Angeles County Museum for 9 years. F. W. B, But on July 6, 1929, I was allowed to return to the United States from Mexico where I had gone to spend a few days on a visit. I was not allowed to reenter the U. S. for nearly a week until all my papers were checked. I have never been back to Germany since leaving there in 1911.

Once I sailed from Wilmington on the Matson Line. F. B. W.

My Father and Mother are presently residing in Germany. My Father is a large land holder and owner of big iron, steel and other metal fabricat-

(Testimony of James D. Casey.)

ing products. I have two brothers who are residents of the United States, Edmund O. Bergmann, 61-34-220th St., Bayside, Long Island and Charles Bergmann, owner and manager of the Siberian Arctic Fur Manufacturing Co., 812 W. Sprague Ave., Spokane, Washington. Edmund returned to Germany during the last war to fight for the Fatherland. Charles came to this country about 1902 or 1903. I had one other brother, Kurt, who served in the Germany Army, Saxon regiment during the last war. He was killed in France. I have never been in or connected with the Germany Army, Navy or Intelligence Service. I have no sisters. The only correspondence I have had with anyone in Germany was with my Mother, Dresden A. Diakonissen Heim Ebenezer Comenuis Str. 33. I have never written to my Father whose address is Neuhaldenslebu, Langestr 16.

I want very much to see this present war over quick. I am disgusted with the white men for getting into this war. The white people should realize that east is east, west is west, north is north and south is south. They should not go beyond their rights. The whites should attend their own business. Other races should be allowed to worship as they please and missionaries should not be sent to tell them they shouldn't worship their idols. (Approved 4 corrections. F. W. B.)

These missionaries are ~~lousy. I'd like to take my hand and hit them in the face.~~ more of the representatives of commercial interests rather than of religious matters. They should rather prevent

(Testimony of James D. Casey.)

human sacrifice and head hunters. F. W. B. As an American citizen I would defend this country wherever the U. S. flag flies. It is not correct to be sent outside the borders of the United States to fight under a foreign flag. I want to see the end of the Hitler regime in Germany. I want to see Hitler licked but not the German people. I have a heart for the German people. There must always be a Germany. A country of 80 million people has a right to have land enough to sustain them. The colonies she once possessed were nothing but barren and desert land with the possible exception of German East Africa. Germany ~~can~~ should never be split up. It will lead only to political unrest and war in Europe. F. W. B. We are fighting Hitler and not the German people. All American citizens have a duty after the war to help Germany and other countries appressed by dictators. F. W. B. Now that we have gone outside the United States. I hate Nazism and Communism. I do not believe that religion and politics should be in any way intermingled. If the law so required, I would fight against the Germans but would prefer

outside the U. S. but if U. S.
attacked by any, I would fight. F. W. B.

a non-combatant service. ∧ After this war, the United States should get some land for the money

(Approved 1 cor F. W. B.)

and effort put into it. They should get Bermuda, Haiti and other islands in the vicinity of the United States in return for our heavy tax bur-

(Testimony of James D. Casey.)

den. F. W. B. Americans don't dislike the German people. It is Hitler who is hated. The Germans had more freedom under Kaiser Wilheim than they do under Hitler. Hitler got into power through propaganda. I don't believe in conscientious objectors and consider them yellow.

I have never purchased any Reichwanderer marks. I never heard of them. But I have been sending 200 marks every 2 months to my mother in Germany since 1938. The last time I was able to send any was July 1, 1941. I did this through the Los Angeles office of the North German Lloyd S. S. Co. E. A. Winkler, general agent, Room 205, 608 S. Hill St., Los Angeles. In 1940, the total amount was $176.45. The last amount was $104.00 on July 1, 1941. I had permit from the government for this—A131192 dated September 12, 1940. I have no investments in Germany and have never sent any of my securities to Germany.

I make donations to the American Red Cross but

(Approved 3 cor F. W. B.)

not to the Long Beach Community Chest. I prefer giving to needy families directly. I have never given any money to any German organization. In 1937 and 1938 I was approached a couple of times each year to become a member of the Bund. I don't remember the names of these persons. I didn't join in as much as I don't believe in German clubs

because I'm an American citizen. F. W. B.

and the like ∧ ~~It is not that I'm not proud of~~

(Testimony of James D. Casey.)

However, having been
~~being a German~~. ∧ I am proud of ~~being~~ a German. It is a great country. Germany is one of

has had world wide admiration
for science and commerce. F.W.B.

the nations that ∧ ~~are not asleep. German people are wonderful. During the last war everyone fought for our Fatherland.~~ I came to this country to better myself. The only opportunities were in the British

Also these were similar to Teutons in social, commercial and religious point of views, F.W.B.

colonies and in the United States. ∧ There was not enough in Germany. People were working for a dollar or fifty cents a day. I'm proud of my United States citizenship although I have never voted. I didn't become a citizen until 1937 through negligence and because I thought I might go to New Zealand.

I think that the U. S. should have a more re-
(Approved 1 correction F. W. B.)

stricted immigration law. Persons from southern and eastern Europe and Asia should not be allowed to come to this country in as large numbers as those from Germany, Sweden, Holland, England,

because more criminals in U. S. are from
Balkans and eastern Europe. F. W. B.

Ireland and Scotland ∧ The Jews should be given a country which they can call their own and they should then be protected from being attacked. The Holy Land should be returned to them.

I have never been arrested by any police officers and have no criminal record. I am going back to

(Testimony of James D. Casey.)

Germany immediately after the war to see my mother. I may stay there for 4 months of the year and spend a few months on the Riviera and a few in the U. S. looking after my investments. This may become my routine for every year.

In the summer of 1941 the 2nd engineer of some boat, a German ~~who came to the U. S. about 1920 but~~ whose name I can't recall, showed me an enlarged photograph of the damage to the English battleship Malaya being repair in an American port. His first name was Herrman or Henmann. He had also been to the German consul's office in Los Angeles. I am not acquainted with any of the German consuls. My only dealing with the German consul was when I had my German passport cancelled. I have never been interest in foreign exchange.

On one occasion there was some wash put on my back fence in spite of signs requesting that it not be hung there. I threw this wash off. There may have been some sailor pants there but I don't recall there being any sailor uniforms.

Many times when people ask me questions they have no business to, I give them any reply I feel like making. I have bought about $1000 in U. S. Defense Bonds and plan to buy $1000 worth every 6 months. In my will, I have designated the city of Long Beach as the beneficiary of my realty here in Long Beach to be used as a park between Mariposa and Santa Clara St., consisting of 9 lots.

F. W. B.

(Testimony of James D. Casey.)

I have read the above statement of nine pages and it is all true. I have put my initials on each page.

Signed:
FRIEDRICH WALTER BERGMANN

Witnessed:
James D. Casey, F. B. I., Los Angeles.

[Endorsed]: Filed 11/18/42.

Q. By Mr. Howser: Mr. Casey, there were several statements made in the original memoranda that Mr. Bergmann objected to?

A. Yes, there were.

Q. Do you recall one of those statements being that you had written, "I am very proud that I am a German" and Mr. Bergmann refused to sign it until you changed it to, "I am very proud that I was a German"? A. That is true.

Q. Did Mr. Bergmann ask you for a copy of this statement that he had signed? [221]

A. I don't recall whether he did or not.

Q. Do you recall informing him that the practice and rule in the office prohibited you from giving him a copy?

A. I don't recall any talk about that particular matter.

Q. Do you recall questioning him about a certain woman who claimed to have a son in the military forces of this country?

(Testimony of James D. Casey.)

A. About a certain woman?

Q. Yes, who came to him.

A. I don't recall talking about any woman who had any son in the military forces.

Q. Do you recall having a conversation wherein you stated it was reported by the neighbors down there that some woman had come to Mr. Bergmann who had a son that objected as a conscientious objector to serving in the services of this country?

A. I don't recall that being reported by the neighbors down there.

Q. Do you recall Mr. Bergmann telling you that he would gladly bear arms for the United States of America if war was declared against Germany?

A. When we first questioned him about that, he was hesitant in his answer. He didn't know exactly what to say. And then he went on to say that he would desire to be a non-combatant, and then he finally said if he was required to do [222] so by law, he would take up arms.

Q. Do you recall that Mr. Bergmann told you that some time during the summer of 1941 a man by the name of Henman or Herman came to his premises and professed to be a Second Engineer, and showed him a picture of a boat, a British boat that had been damaged in the war?

A. Yes.

Q. You recall that Mr. Bergmann told you that he had told this gentleman that he didn't

(Testimony of James D. Casey.)

want to have anything to do with him and would not rent him an apartment?

A. No, I don't recall that.

Q. He did tell you that after the war he wanted to go to Germany?

A. He stated after the war was over that he was planning to leave this country and go back to Germany and probably down to the French Riviera and he might come back to the United States two or three months out of the year.

Q. Did he tell you the purpose of going to Germany?

A. I am not sure, but I believe he gave several different reasons why he wanted to go back to Germany.

Q. Was one of those reasons to see his mother?

A. I believe that is true.

Mr. Howser: I believe that is all, your Honor.

Mr. Dean: May I ask one question on redirect, your Honor? [223]

Redirect Examination

By Mr. Dean:

Q. With reference to the question that counsel has propounded to you, Mr. Casey, on cross examination to a portion of this written statement, Government's Exhibit No. 2, in which Mr. Bergmann refused to sign the statement that he was proud of being a German, prior to the time he refused to sign the statement including that sentence, did he in fact tell you he was proud of being a German?

(Testimony of James D. Casey.)

A. That was a statement he made to me.

Mr. Dean: That is all the redirect examination.

Mr. Jacobson: Just one question.

Recross Examination

By Mr. Jacobson:

Q. When you talked to Mr. Bergmann, did you observe that he did have some difficulty with the English language, sentence construction?

A. I didn't find that he did. I was quite surprised. It thought he spoke very well. I didn't find that he had any trouble with his verbs. I think he left out articles once in a while, as I recall.

Q. He did, when he saw the written statement, change the tense from present to past, that is, with respect to the fact he was proud of being a German?

A. He stated he couldn't have that in the statement, but he would sign a statement that said he was proud he was [224] a German.

Mr. Jacobson: That is all.

Mr. Dean: No further redirect examination, your Honor.

The Court: All right.

(Witness excused.)

Mr. Dean: At this time, your Honor, it is our understanding that one additional Government witness is on the way, and it may be, after a short recess, the witness will be available. So may we have one at this time?

The Court: Yes.

(A short recess was taken.)

The Court: All right, gentlemen, proceed.

Mr. Dean: Mr. Rankin, will you take the stand?

THOMAS NEAL RANKIN

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: Thomas Neal Rankin.

The Clerk: R-a-n-k-i-n?

The Witness: Right.

Direct Examination

By Mr. Dean:

Q. Mr. Rankin, I am going to ask you to speak as clearly as you can so counsel for Mr. Bergmann can hear you.

What is your occupation?

A. I am a Naval Ordnance Inspector down at the Maywood [225] plant.

Q. You live in Long Beach?

A. Yes, sir, I do.

Q. How long have you lived there?

A. About 23 years.

Q. How old are you, Mr. Rankin?

A. 28, sir.

Q. Directing your attention to the month of April, 1937, did you on that occasion attend the hearing on the petition for citizenship of the de-

(Testimony of Thomas Neal Rankin.)

fendant in this case, Friedrich Walter Bergmann?

A. I did, sir.

Q. Do you recall where that hearing was held?

A. It was held at the old Federal Building. It was the old sandstone building before this one was built.

Q. Were you present during the hearing yourself?

A. The first part of it I wasn't.

The reason I was down there, my father came from Scotland some time back and because the papers, land grant papers had been mislaid, I was called down in his stead.

Q. You were there during a portion of the hearing? A. That is right.

Q. At that time did you hear any statement made by the defendant in this case?

A. Yes, I did.

Q. Did you hear any statement concerning service in [226] the German Army?

A. Well, it seemed——

Q. The answer is "yes," is it, Mr. Rankin?

A. Yes.

Q. Will you tell us what those statements were?

A. Well, the judge was presiding over the hearing at the time and, as I recall, he asked him questions there that really astounded me because I really didn't know them myself.

Q. Did you hear any statement concerning service in the German Army?

A. Yes. I believe it was the Turkish Army.

(Testimony of Thomas Neal Rankin.)

I think it was the artillery. And if I recall correctly, something having to do with German Intelligence came out during the conversation.

Q. Did Mr. Bergmann mention the term "German Intelligence"?

A. To my knowledge, yes, he did, as I recall.

Mr. Dean: That is all the direct examination.

Cross Examination

By Mr. Jacobson:

Q. Where did this conversation take place?

A. It took place down in the—I forget the name of the building—it was the first time I was in it. In fact, it was the old building, the old red sandstone building.

Q. Was it in a court room?

A. No, not a court room. It was in the judge's' study [227] there off of the naturalization headquarters.

Q. Who was Mr. Bergmann talking to or with?

A. He was talking with Judge Yankwich. He was the one presiding over the court at the time—I mean over the hearing. I was in there with a doctor friend of Mr. Bergmann now deceased, Dr. Earel, and Bergmann and myself were there.

Q. Dr. Earel of Santa Ana, the eye specialist?

A. That is right.

Q. And there was a conversation between Judge Yankwich and Mr. Bergmann about World War I? A. Yes.

Q. Can you tell me what the judge said and what Mr. Bergmann said?

(Testimony of Thomas Neal Rankin.)

A. Well, there were a lot of questions asked there, and a lot of talking going on. He asked him about service, what he did in the war, and he said he had been with, I believe, the Turkish Army—I mean the German Army, but in Turkey at the time.

Q. Mr. Bergmann told Judge Yankwich that?

A. Yes, sir, that is right.

Q. What did Judge Yankwich have to say?

A. Of course, he was asking most of the questions. I forget just what he said there. He questioned him. He seemed to have data in front of him that—well, like he had the situation down there in black and white and he just asked him, and Bergmann said yes, that he was with the German [228] Army at that time.

A. Did you stay for the conclusion of the hearing? A. Sir?

Q. Did you stay for the conclusion of the hearing?

A. Well, for the particular hearing when the two witnesses, I being one of them, was before the judge in the case concerned, yes.

Q. Now, let me understand you. Were you a witness for Mr. Bergmann too?

A. Yes, sir, I was. I was a stand-in witness. My father was called out, and he called up and said to come down and take his place. I had known Mr. Bergmann for some 18 years, quite a while.

Q. And you were willing to go in and testify that you thought he would be a proper person to be granted citizenship? A. Yes.

(Testimony of Thomas Neal Rankin.)

Q. But you were really substituting for your father who was at sea?

A. Oh, no. My father, you see, was born in Scotland, and he came over at a very early age to this country, and for that reason the land grant papers that were taken out at the time, homestead papers I believe, had been mislead somehow, and they couldn't find that my father in theory was not what you would call a citizen, but he had been here all that time. [229]

Q. Oh.

A. So he wasn't qualified from the point of law to take over as a witness.

Q. I see; so you being native-born were qualified to do so? A. That is right, yes.

Q. Were you there when the proceedings concluded? Did you see Mr. Bergmann take his oath?

A. As I recall, that was just a part of the proceedings subsequent to the oath taking.

Q. Subsequent or prior?

A. I mean before the oath taking. And after that, I suppose it was done. I wasn't there when the oath was taken, no.

Q. Did you go back to Long Beach with Mr. Bergmann after he had been sworn in?

A. Let's see; I believe he went home with Dr. Earel. I don't just recall how that was.

Mr. Jacobson: I think that is all.

The Witness: That is quite some time back.

The Court: Now, Mr. Rankin, since you have brought me in I am getting interested.

(Testimony of Thomas Neal Rankin.)

You have known me for a long while, haven't you?

The Witness: Right; from that time on, yes.

The Court: And you have seen my name in the paper a good deal? I have been a judge for a long time; 15 years. [230]

The Witness: That is right.

The Court: Well, are you quite sure that this hearing took place before me?

The Witness: That is right, yes, sir.

The Court: This particular one here when I asked these questions? Or aren't you confusing the two occasions, when the hearing was had before the Commissioner who asked the questions, then they came in to my court and I merely gave them a pep talk, the way I usually do, about the meaning of the oath they were about to take. I divide the oath into two parts and tell them what it means, and they have to renounce ideologies. In fact, I have the speech written down. Then I have the oath taken, and then I greet them as fellow-Americans. You have been in my court when I did that?

The Witness: No, sir. The name Judge Yankwich is very—well, it is not a common name.

The Court: That is right.

The Witness: And that name stuck in my mind, you see.

The Court: I think you must be in error because there is no record of any hearing or in-

(Testimony of Thomas Neal Rankin.)

quiry before me. That is the reason I asked. This was not a contested naturalization.

The Witness: That is funny.

The Court: I mean what we call on the docket a contested naturalization which is referred to the judge. I think you are in error, not as to the facts, but that these questions were asked—because they are asked—but that [231] proof is not made here and hasn't been for 10 years before the judge.

The Witness: There was a judge that was in charge of it, was there not?

The Court: Yes, but it wasn't in court. It was before the commissioner, before the examiner, and you went as witnesses.

The Witness: Well, I would swear on a stack of Bibles that Yankwich was the name.

The Court: You would?

The Witness: Yes, sir.

The Court: Oh, I may have been the little boy who wasn't there.

The Witness: That was the name of the party concerned.

The Court: Of course, they use the name of the judge who is interested at that particular time. Well, at any rate, that is perfectly all right. It isn't material, but frankly, I do not remember. I have held naturalization many days.

The Witness: I recall it.

The Court: All the records of my contested naturalizations are before me, and they do not dis-

(Testimony of Thomas Neal Rankin.)

close my holding a hearing in regard to this applicant, and the hearing could only have been held in case the examiner was in doubt, and evidently he wasn't in doubt and recommended.

The Witness: Yes. [232]

The Court: Well, it is perfectly all right. It is immaterial whether I presided or whether someone else presided. The question is those statements were made, but I think you are in error that they were made before me. They were probably made before the commissioner who heard the case.

The Witness: If you check that, sir, I think you will find that that is so.

The Court: All right.

Mr. Dean: No redirect examination, your Honor.

The Court: All right. Step down.

(Witness excused.)

Mr. Dean: With the exception of one witness who I understand will be here at 2:00 o'clock, as I have informed counsel, the Government rests.

The Court: All right.

Mr. Howser: Your Honor, because of certain material and other things involved in this case, and under the pleadings, particularly Paragraphs 6 and 8 of the Government's complaint, it has been fully our intention to move for a dismissal of this proceeding on the ground that under Paragraph 6 it has not been substantiated as alleged in the complaint that all of Bergmann's representations

were false and fraudulent, which is the meat, as I understand such a proceeding, and under Paragraph 8 that Bergmann obtained the certificate of naturalization fraudulently and illegally. [233]

We do not believe there is any proof before the Court as to that.

Now, until the People or the Government bring to us the additional witness, we are really not in a position to make such a motion. We are willing to proceed without prejudicing any of our rights to ask the Court to entertain such a motion after they have submitted their other witness if that is satisfactory to the Court.

The Court: Well, I just do not wish to lose time, gentlemen, is all.

Mr. Howser: That is right, and that is why I suggested that manner of procedure.

The Court: I would prefer to have the matter proceed in an orderly fashion and counsel make the proper motions at the proper time. In anticipation I have studied all the cases that I know to exist on the subject. I think to protect the record counsel should have the opportunity of making it in the light of all the testimony. Can you not get the witness at 1:30, and can we not adjourn now until 1:30 for that purpose?

Mr. Dean: Your Honor, I am almost willing to concede that the testimony of this witness, as it has been told to me by others—I was just informed of the fact this morning that this witness might have some testimony that was relevant to this case, but I have not as yet talked to the witness.

The Court: Do you know if it is cumulative of the type [234] given by others? We have had everybody from banker to police officer to just the ordinary neighbors here parading before the Court. I don't know how many witnesses you have had. You have had a couple dozen anyway.

Mr. Dean: At least, your Honor. I will state that the testimony of this witness, however, will not be of such a nature that it will be proved by the witness that all of the representations made in the petition were false. I will concede that. That certainly is true.

The Court: I may say this: It is not my understanding of the law that all the representations have to be false. If a material one is false, it is sufficient because the statute which is now being codified into what is known as the Nationality Code gives conditions upon which naturalization may be secured. It gives the requirements both in the positive and the negative. [235]

It begins with 704, and first we have that a person shall not be naturalized unless he knows the English language.

In 705 we have the exclusion of certain persons who profess certain ideas. It is the recasting of the old section relating to anarchy and polygamy. It has been broadened now to include others.

Next we have 707 which is couched in the negative too and says that no person shall be naturalized unless immediately preceding the filing of petition for naturalization he continuously resided within the United States for at least five years and

has resided continuously within the United States from the date of the petition up to the time of admission to citizenship (that is 2) and during all the periods referred to in this sub-section has been and still is a person of good moral character, attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States.

Now, the courts have held that the failure to satisfy one of those requirements is sufficient ground for denial.

The statute which authorizes cancellation for fraud——

Mr. Dean: 738, your Honor.

The Court: ——738 says that—let's see how it is worded—"It shall be the duty of the United States District Attorneys for the respective districts upon affidavit showing good cause therefor, to institute proceedings in any court [236] specified in subsection (a) of Section 701 in the Judicial District in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground of fraud or on the ground that such order and certificate of naturalization were illegally procured."

The Supreme Court in the Luria case, the leading case on the subject, has stated that: "These requirements (the requirements of the Act of 1906) plainly contemplated that the applicant, if admitted, should be a citizen in fact as well as in

name—that he should assume and bear the obligations and duties of that status as well as enjoy its rights and privileges. In other words it was contemplated that his admission should be mutually beneficial to the government and himself, the proof in respect of his established residence, moral character and attachment to the principles of the Constitution being exacted because of what they promised for the future, rather than for what they told of the past."

Then the Court said: "By the clearest implication those laws show that it was not intended that naturalization should be secured thereunder by an alien whose purpose was to escape the duties of his native allegiance without taking up on himself those of citizenship here, or by one whose purpose was to reside permanently in a foreign country, and use his [237] naturalization as a shield against the imposition of duties there, while by his absence he was avoiding his duties here."

In that case, of the three requirements, the Court held that the appellant Luria had never intended to reside in the United States.

We have others wherein another of the requirements was absent. So, without passing upon the question, I take it that if it be shown that fraud exists as to any one of them it is sufficient.

We have the cases from the last war. We have the Schurmann case in our own Ninth Circuit, Schurmann v. United States, 1920, 264 Fed. 917, where the cancellation was on the ground of fraud regarding the attachment to the principles of the

United States, which is part of No. 3. In that case the Court took up a book which had been published by the man, by the appellant many, many years before by showing that after the entry into the war of the United States he came forth with the same ideas. The cancellation was ordered in that case by Federal Judge Vaughan and the opinion was written by Judge Hunt and concurred in by Judge Gilbert and Judge Wolverton and held sufficient to justify the cancellation.

We have many from other circuits; United States v. Kramer in the Fifth Circuit. In that case the lower courts had dismissed the bill and held it insufficient, and the Court held that the proof was sufficient to cause cancellation. That [238] case arose in Texas and the Court said this;

> "American citizenship is a priceless possession, and one who seeks it by naturalization must do so in entire good faith, without any mental reservation whatever, and with the complete intention of yielding his absolute loyalty and allegiance to the country of his adoption. If he does not, he is guilty of fraud in obtaining his certificate of citizenship.
>
> There can be no doubt that, had the defendant in this case been guilty of the utterances with which he is charged before his naturalization, and that fact had been known to the Court, he would not have been admitted. The proof makes out a prima facie case of the disloyalty of the defendant, and shows his continuing allegiance to the German Emperor."

The proof here is directed to one cause only. The government has not attacked the man's moral character or his thrift or his industry. It couldn't very well; it wouldn't be material anyway. But the government has produced witnesses who have testified to certain acts which tend to show disloyalty to the principles of American Government which is clearly traceable to the time of naturalization.

There was a witness who testified that I conducted the examination. I may say, frankly, if I had conducted the examination and had seen this, there would have been no naturalization because I wouldn't allow a person to be [329] naturalized, a man who put down on paper, "I will not fight against Germany." He would have to do a lot of talking to talk me out of it.

Mr. Howser: Your Honor, that is principally the essence of the motion, that the testimony——

The Court: I am merely saying there is clearly a prima facie case here. I don't want to criticise Mr. Barber or anyone else, but when a man deliberately writes down "I won't fight against Germany" it comes within the McIntosh case. I don't know of any judge here who wouldn't have required some very, very positive proof of loyalty to the United States after seeing that statement.

So we can start right there with a mental reservation and then tie the rest together, and if you tie them together you clearly have a prima facie case. The Government does not have to prove that the entire application was false. It attacks

it only in the essential things and that is the intention. You want to remember it doesn't say "loyalty" only. It says also "well wishing, well disposed to the good order and happiness of the United States." A man can't be said to be well disposed to the good order and happiness of the United States who said the Japanese had to attack us at Pearl Harbor, who said, "I am a Nazi," and who said, "We—Hitler will do this and that."

If you look up the last issue of Time Magazine you will find some of the Congressmen have been reelected now who [240] said as vile things. Leave those aside and the fact is you have got a very strong prima facie case here which, if uncontradicted, would require the cancellation of citizenship.

I am not anticipating your motion, but I am merely indicating to you as I understand the law the Government has to prove just falsity in one respect, that is, at the time he swore allegiance to the United States he in fact had not surrendered his loyalty to his home country, and it doesn't have to prove any more.

Mr. Howser: Our thought was, your Honor, that the Government was so informed by their own witnesses and as such there possibly couldn't be any fraud because of the reservations that were put in the application itself.

The Court: No, no. That wasn't brought to the attention of the Court. There is no waiver of a fact like that from concealment. It may well be that in the particular instance if you had nothing else but that statement in the reservation, that

possibly it might be held, "Well, the Government having failed to notice that and the matter not having been called to the Courts, the Government shouldn't rely on it." But when other things appear subsequent, you may start with that as a tying point, you see. The fault wasn't his. If there is a fault, it wasn't the examiner's in allowing him to talk him out of it, because he believed the McIntosh case so justified it. It is true Mr. Barber and the others [241] are very generous to conscientious objectors because they realize they are recognized in our law. We make provision for them. But the law says an American, a native born American may be a concientious objector, but an alien cannot be a conscientious objector and become a citizen.

In other words, the Government demands of an alien who seeks naturalization a standard of conduct that is higher than a native born citizen. You can be the most immoral man in the world and you can't be denied the right to vote at elections. The only thing that deprives you of citizenship is a conviction of a felony. Let there be proof of the least departure from rectitude during that period of five years, even ordinary sex sins which are not even considered a crime under the law, let there be a showing of that and citizenship is denied immediately.

As I say, it may well be that that alone might not be sufficient, but when you have all the others, of course, that becomes merely important as ex-

pressing a hesitation which the conduct later on gave whole expression.

I am willing to admit that the Government would be barred, so far as that allegation is concerned, so long as he convinced the officer, if that was the only thing, the Government would be barred from basing revocation on that alone, but the Government merely offers that as a chain, as a link in his chain of proof to show that these expressions are not spontaneous, sporatic expressions but the continuous express- [242] ion of a philosophy which antedated his application for naturalization, and for that purpose it has a right to be considered. You made no objection to it being received in evidence.

Well, I merely wanted to indicate to you my understanding of the law. It is 12:00 o'clock now.

Mr. Dean: Your Honor, may I make a statement? Mr. Barber has not asked me to do this, but I felt for the sake of the record I should state it. There is a document here which I have had in my possession indicating that Mr. Barber called to the attention of his superior officer the reference to question No. 26 and that the decision as to what was to be done in that case did not rest in Mr. Barber's province.

The Court: This was not a contested naturalization, as we call it.

Mr. Barber: That is right, your Honor.

The Court: This was a straight recommendation and there was no *b*earing before me or any other judge on the regular monthly calendar we

call for contested naturalization matters. Is that correct?

Mr. Barber: That is correct. The Court never had this before him at all.

The Court: So long as Mr. Barber is under oath, we will consider this answer too so the record will show. I merely put in the record what we know. I didn't want to [243] humiliate the young man by telling him he just took the name that may have appeared there in the summons. I was so certain, unless it was a contested naturalization, that it would never come before any of us. I want to state it as a fact, because that is our procedure here. I have held individual naturalizations, but not in this district. In the Western District of Washington they still hold them, and in Tacoma I have held naturalizations on three occasions, at least, and asked all the questions, examined the witnesses day in and day out. I then realized what hard work Mr. Barber and the others are really doing, after I had to handle individual cases while presiding there.

Well, how about this witness?

Mr. Dean: Well, your Honor, the witness' testimony is with reference to a matter that has heretofore not come up. It has no reference to counsel's motion.

The Court: All right, gentlemen, we will take a recess then, our regular recess, and I will hear you at the proper time and make any comment. What I have said is merely to indicate my comprehension of the law in view of your statement

that you felt they had to prove falsity in everything.

Mr. Dean: I might have it understood that I haven't talked to the witness and there is a chance that I may decide the testimony is not relevant.

The Court: I wouldn't want you to put a witness on the [244] stand unless you knew what he was going to testify to. Contrary to the general belief, the Court feels the lawyer does not perform his duty to the Court by putting a witness on the stand without knowing what the witness is going to say because he guarantees the veracity of the witness to the Court.

When a witness is asked, "Did you talk to Mr. Dean?" I would interupt and say—I am just using your name as a way of illustration—my answer is, "If you didn't, I would be very much surprised that Mr. Dean would put a witness on the stand in advance without talking to him in advance."

All right, we will take our recess until 2:00 o'clock P. M.

(Whereupon, at 12:10 o'clock P. M., a recess was taken until 2:00 o'clock P. M., of the same day.) [245]

Los Angeles, California
Wednesday, November 18, 1942
2:20 P. M.

The Court: All right, gentlemen, proceed.

Mr. Dean: The witness who was supposed to be here has not as yet arrived and it is likely

she will not be here until 3:00 o'clock. It occurred to me that should we consider her testimony material that the Court might put her on out of order.

The Court: You will have to rest without condition, and later if she comes, if you ask me, I will consider the question of reopening the case for putting her on.

Mr. Dean: At this time I rest.

The Court: So counsel may make their proper motions.

Mr. Howser: May it please the Court, at this time it is out intention and we do so move that the complaint in this proceeding, in United States versus Bergmann, be dismissed. For brevity purposes, may I refer to the basis for the motion as heretofore stated immediately before our noon recess?

The Court: You may repeat it.

Mr. Howser: The basis of it is that the allegations of the complaint, more particularly referring to allegation 6 of the plaintiff's complaint, has failed for lack of proof in that it has not been established that the representations were false and fraudulent. There is no proof that the defendant Bergmann was not, in fact, attached to the principles [246] of the United States, nor has he been for the five-year period of time before filing his intentions; and particularly as to paragraph 8 wherein it is alleged that Bergmann obtained a certificate of naturalization fraudulently and illegally.

Now, the Court has indicated certain things, and because of the thorough review of the law at hand and the cases that we have concerning such matters, your Honor, we are willing to not further press this motion at this time and abide by any decision the Court should make in that respect.

The Court: Well, as I indicated before, I feel the evidence presented by the Government is sufficient to sustain the burden of proving the allegations of the complaint. The motion will be denied.

Mr. Jacobson: Call Dr. Crump.

DR. IRVING J. CRUMP,

called as a witness by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: Dr. Irving J. Crump.

Direct Examination

By Mr. Jacobson:

Q. You are Dr. Irving J. Crump, of Long Beach, are you not? A. Yes, sir. [247]

Q. You have been a dentist in Long Beach for how long? A. About 22 years.

Q. Do you have any family, Doctor?

A. I have eight children. My wife is deceased.

Q. Have you any of your children in the United States military service at this time?

(Testimony of Dr. Irving J. Crump.)

A. I have three boys who are in the service.

Q. Do you know Walter Bergmann, the defendant in this case? A. Yes.

Q. How long have you known him?

A. Oh, many years: Probably 15 years.

Q. Your dental office is maintained in that general section of Long Beach where Mr. Bergmann has his Seaside property? A. Yes.

Q. During the many years you have known him, have you had occasion to visit with him or converse with him on more than one occasion?

A. Oh, yes. He has been in and out of the house quite often.

Q. How many times would you say you have talked to Mr. Bergmann since you have known him? A. What is that?

Q. How many times would you say you have talked and visited with Mr. Bergmann since you have known him? [248]

A. Oh, probably a good many hundred times.

Q. What subjects have you discussed over the years since you have known him?

A. Well, one thing he talked to me about one time was his South Sea trip. He is quite a hand to go off and collect specimens. I think he is very much of an enthusiast along that line. I would say he is a very good citizen, as far as that goes.

Mr. Dean: I ask that that be stricken, your Honor.

The Court: It may be stricken.

Q. By Mr. Jacobson: Have you ever had a

(Testimony of Dr. Irving J. Crump.)

conversation with Mr. Bergmann in your home when your daughter was present about what he intended to do with his property?

A. Yes. At one time we were kind of talking——

Q. Just state where this was. A. Yes.

Q. And when, if you can.

A. I should judge about a year ago.

Q. In your home? A. Yes.

Q. You have your dental office in one portion of your home and then you live in the rest of it?

A. That is right.

Q. This was in your home part? A. Yes.

Q. Who was present? Do you recall? [249]

A. My daughter-in-law.

Q. Is that your son's wife?

A. My son's wife, yes.

Q. And yourself and Mr. Bergmann were present? A. Yes.

Q. What was said by Mr. Bergman or your daughter-in-law or yourself about his holdings in Long Beach?

A. Oh, she said, "Walter, what are you going to do with all your money if you don't get married?"

He said, "I will probably give it to the Salvation Army and the Y.M.C.A."

Q. Was there any further conversation along that line? A. No.

Q. In any other conversations has Mr. Berg-

(Testimony of Dr. Irving J. Crump.)

mann indicated that he was going to dispose of his property in that way?

A. No. That is the only time he ever spoke of it to me.

Q. Have you ever spoken or conversed with Mr. Bergmann on the subject of his political beliefs?

A. Well, he told me he distributed circulars, the Nye circulars that came out on the intervention question. That was previous to Pearl Harbor, I should say.

Q. You mean when the great campaign——

A. When the campaign was on.

Q. ——of Intervention vs. Isolationism was on?

A. Yes, sir. [250]

Q. Have you talked to him about that at any time, about his beliefs in that regard?

A. Well, yes, I have.

Q. Do you know about when that was?

A. I should judge that must have been maybe six months ago.

Q. Where? A. In my house.

Q. Who was present?

A. My daughter-in-law.

Q. Was that before or after the attack on Pearl Harbor?

A. That was after Pearl Harbor.

Q. After the attack on Pearl Harbor?

A. Yes.

Q. What was said by you or Mr. Bergmann or your daughter-in-law?

(Testimony of Dr. Irving J. Crump.)

A. Well, he was opposed to the active intervention, of course, but I wouldn't say that was before Pearl Harbor. I mean that was before Pearl Harbor, not after.

Q. Now, at any time since Pearl Harbor have you ever talked to Mr. Bergmann about this incident at Pearl Harbor where the Japanese attacked our fleet?

A. Oh, yes. I think he thoroughly was with the United States.

Mr. Dean: Just a moment. I object to that as a conclusion. [251]

Q. By Mr. Jacobson: Just answer yes or no if you had any conversation with him since Pearl Harbor about that. A. Yes.

Q. Did you have more than one coversation with him about that?

A. No, just when he was at the house.

Q. About when would you say that was?

A. About six months ago.

Q. Who was present and where did it take place?

A. My son and daughter-in-law were both there at that time.

Q. Was your son home on leave?

A. No. This is another son who is working in an airplane factory.

Q. What was said by any of you about the attack on Pearl Harbor?

A. Well, we just discussed it generally and, of course, we were very much——

(Testimony of Dr. Irving J. Crump.)

Q. What did Bergmann say if you recall?

A. Well, as I recall it, he thought the United States was justified in going to war with Japan.

The Court: What did you expect him to think? That even after we were attacked and Germany and Japan announced that they were at war with us you expected him to say "We oughn't to fight even then"?

The Witness: Oh, no. [252]

The Court: What did he say in so many words, Dr. Crump?

The Witness: He thought we were justified.

The Court: Who?

The Witness: The United States.

The Court: In doing what?

The Witness: In going to war with Japan.

The Court: How about Germany?

The Witness: I should say the same thing.

The Court: Are you expressing your ideas or what he expressed?

The Witness: That was his idea.

The Court: You were an isolationist too, I guess?

The Witness: No. I have three sons in the service and I am not an isolationist.

The Court: That doesn't make any difference anyway.

The Witness: I am signed up myself.

(Testimony of Dr. Irving J. Crump.)

The Court: You were an isolationist, were you, before the war?

The Witness: No.

The Court: I just didn't want you to *con*tribute to him your own ideas.

The Witness: No, I am not.

Q. By Mr. Jacobson: Had you ever talked to Mr. Bergmann prior to Pearl Harbor about Mr. Bergmann's views on militarism? [253]

A. Yes, I have several times.

Q. Can you recall the approximate times?

A. Oh, four or five years ago we were talking about it generally. He said if he had to go back to Europe he preferred to live in Switzerland.

Q. Did he give the reason?

A. He liked their form of government.

Q. Did he make any comment about militarism?

A. He didn't approve of the military.

Q. Did he say that? A. Yes.

Q. Have you observed Mr. Bergmann's work in the Harbor district there with respect to beautifying property and the like? A. Yes.

The Court: Let's not make that an issue. The Government is not challenging the man's thrift and it has nothing to do with loyalty at all. A man may be the slouchiest man in the neighborhood and still be a good citizen. I am not interested in how good a worker he is or how much money he has made or how he has taken care of his property and built it up for the benefit of the community. That is not a test of loyalty in this particular case. I

(Testimony of Dr. Irving J. Crump.)

don't think what he does to his property is material. It is a side issue and has nothing to do with it. Nobody has criticized him so far and it wouldn't make any difference if they did. [254]

Mr. Jacobson: I simply wanted to show the man's efforts in civic betterment.

The Court: If a man improves his own property and makes a lot of money, that has nothing to do with the kind of citizen he is. Everybody admits he has improved his property and that he works all the time at it. That has nothing to do with this case here. We don't enter into that. We don't ask how much money a man makes when he is interested in citizenship. We don't even deny citizenship on the mere ground the man is poor or on charity unless it appears that he lived here for many years and then when he was about to obtain a pension all of a sudden he decides he loves the United States enough to become a citizen. We don't deny citizenship on the ground of poverty. Otherwise you would have to go and prove his bank account and what would the Government answer to that? They couldn't prove that he made it dishonestly. It wouldn't be material anyway.

Mr. Jacobson: Of course, there has been testimony that he was going to liquidate his holdings and that he had actually liquidated some of them and sent the proceeds to Germany.

The Court: That may be all right. You can restrict it to that, but as to what improvements

(Testimony of Dr. Irving J. Crump.)

he makes on his property doesn't make any difference. That is why I stopped Mrs. Thiessen from telling us how badly the furniture was being treated and what a crime or shame to allow such nice [255] furniture to be eaten up by moths when people could live there and pay good rent. I stopped that purposely so we wouldn't be getting into some collateral issue. The only question is: Is there fraud in securing this petition in the particular instance that the man was not attached to the principles of the Government of the United States as shown by his conduct before and after. That is all that is before the Court.

There is an allegation in the complaint also that he did intend to reside elsewhere and if you want to direct evidence to that, that is perfectly all right.

Mr. Jacobson: Very well.

The Court: It is evident even from the testimony of this witness that he talked constantly about going to some place else, because he talked about going to Switzerland and living there. I want to confine the issues to the one particular question and that is the question alleged in the complaint which the answer joins issue.

Q. By Mr. Jacobson: Doctor, have you ever had any conversation with Mr. Bergmann in which the subject of his return to Germany was discussed?

A. Yes.

Q. On more than one occasion?

A. No, I don't think so.

(Testimony of Dr. Irving J. Crump.)

Q. When was it with reference to before the United States went to war? [256]

A. This was along about six or seven years ago.

Q. Where did it take place?

A. At my house.

Q. At your house? A. Yes, sir.

Q. Do you remember if anybody else was present besides you and Mr. Bergmann?

A. My wife was there at that time.

Q. Your wife was living then? A. Yes, sir.

Q. That would be in about 1936, would you say?

A. Yes.

Q. What was said about whether Mr. Bergmann intended to return to Germany or not?

A. He said if he returned to Europe he wouldn't go to Germany; he would go to Switzerland for the reasons I gave.

Q. I can't hear you.

A. If he returned to Europe, he wouldn't go to Germany, but he would go to Switzerland because he preferred to live in Switzerland.

Q. Did he say anything about having any relatives in Germany?

A. He didn't mention his relatives at all.

Q. At that time your long acquaintance with Mr. Bergmann have you ever had any conversation in which Bergmann expressed his views on the American form of Government? You have [257] to answer that yes or no. A. Yes.

Q. Would you say you had more than one?

A. Yes, I presume I have had several.

(Testimony of Dr. Irving J. Crump.)

Q. About when did they take place?

A. Well, previous to Pearl Harbor he was very much of an interventionist.

Q. When?

A. That would be previous to Pearl Harbor, a year ago or more.

The Court: He was what?

The Witness: He was an interventionist.

The Court: No. You mean he was opposed to intervention? That is an Isolationist.

The Witness: Yes, that is right.

Q. By Mr. Jacobson: I didn't have in mind his view on some purely American policy of the moment, but I mean as to the type and form of our Government in general. Had he ever expressed any views one way or the other on that?

A. Yes. He admired this Government.

Q. Did you ever hear him express any views on the government of the Third Reich or the government of Germany under Hitler?

A. More so under the Kaiser, not under Hitler; before Hitler's time.

Q. Well, what was his view on that? [258]

A. I understand he left Germany on account of that condition there, being under the Kaiser and not liking him.

Mr. Dean: I ask that that be stricken.

The Court: That may be stricken.

Q. By Mr. Jacobson: Did he tell you he had——

A. He left Germany on that account.

(Testimony of Dr. Irving J. Crump.)

Q. Did he ever discuss with you whether or not he had any membership in any German-American Bund or German Bund or club?

A. He said he had no connection with any of them.

Q. He did tell you that? A. Yes.

Q. In his conversation did he ever give any reason why he hadn't ever had any membership in any clubs?

A. Well, I should judge because he didn't approve of it.

Mr. Dean: I ask that that be stricken.

Q. By Mr. Jacobson: Well, did he give any reason that you recall? A. Yes.

Q. What reason did he give for not having membership in any German Bunds or clubs?

A. Because he was living in the United States and under the United States form of government.

Mr. Jacobson: You may cross-examine. [259]

Cross Examination

By Mr. Dean:

Q. Dr. Crump, you say you have known Mr. Bergmann for 15 years? A. Over 15 years.

Q. Have you in the course of that time rendered professional services to him as a dentist?

A. Several times.

Q. Dr. Crump, you stated on direct examination just a few minutes ago that you had a conversation with Mr. Bergmann about six months ago——

A. Yes.

(Testimony of Dr. Irving J. Crump.)

Q. ——in which he indicated he was opposed to intervention. Now, you later charged that and said it was before Pearl Harbor. A. Yes.

Q. What makes you sure it was before Pearl Harbor?

A. Because I checked myself and recalled I was wrong.

Q. I noticed you did. I want you to tell us why you checked yourself.

A. That was it; I made a misstatement.

Q. Yes, but you remember your first testimony was that it was six months ago. Why did you feel that you were incorrect in making that statement?

A. I know I was.

Q. I say why? Why were you incorrect? [260]

A. Because since Pearl Harbor he hasn't been talking intervention at all.

Q. Is there anything that assists you in determining that that conversation actually took place before December 7, 1941? What is it that makes you think it occurred before Pearl Harbor?

A. I know it did because I talked to other Germans down there previous to Pearl Harbor and he was of the same opinion.

Q. And that is the only reason you think it occurred before Pearl Harbor?

A. I know it occurred before Pearl Harbor.

Q. Now, Dr. Crump, you said that Mr. Bergmann indicated he was opposed to intervention. Did he ever use the term "intervention"?

(Testimony of Dr. Irving J. Crump.)

A. Well, I wouldn't know whether he used the term "intervention" or not. What he was telling me, he distributed these circulars that Senator Nye put out and I presume that is intervention.

Q. But you don't recall him using that term "intervention"? A. No.

Q. Do you recall what he said?

A. He said he distributed these circulars.

The Court: In distributing them did he say what they were, or did he say, "Read something I believe in"? [261]

The Witness: Yes; they were something he believed in.

Q. By Mr. Dean: Was there anything else that he said? Was there any other explanation of any kind besides that? A. Not that I recall.

Q. Now, you have also said that Mr. Bergmann admired this Government. Did Mr. Bergmann in these conversations with you use the words "I admire this Government"? A. Yes.

Q. You are positive he used that term?

A. Yes, sir.

Q. Did he explain why he admired it?

A. Because—well, it was on account of its free institutions.

Q. Did he say "free institutions"?

A. Yes, sir.

Q. Are you positive he said that?

A. Yes, sir.

Q. Do you recall any other explanation by Mr. Bergmann as to why he admired this government?

(Testimony of Dr. Irving J. Crump.)

A. No, I don't know as I do.

Q. Now, you have said you have known him in excess of 15 years. Dr. Crump, at any time during that period has he ever mentioned his relatives to you?

A. Since this affair come up he has mentioned his mother to us. [262]

Q. But he never mentioned his mother to you——

A. Since then he has.

Q. But not before that time?

A. Not before that, no.

Q. What was the occasion of his mentioning his mother to you since this affair come up?

A. When he was telling me he had no connection with the German Bund or the different societies. He said the only connection he had in Germany was he sent his mother money previous to Pearl Harbor.

Q. You are certain you have seen him a good many hundred times? A. Yes, sir.

Q. And at no time he ever mentioned his relatives to you? A. No.

Mr. Dean: I think that is all the cross examination.

Mr. Jacobson: May the doctor be excused, your Honor?

The Court: Yes.

(Witness excused.)

The Court: Call your next witness.

By Mr. Jacobson: Mr. Mitchell. [263]

JOHN W. MITCHELL,

called as a witness by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: Mitchell; John W. Mitchell.

Direct Examination

By Mr. Jacobson:

Q. Mr. Mitchell, you live in Long Beach?

A. Yes, sir.

Q. What is your job?

A. I am a letter carrier.

Q. With the Long Beach Post Office?

A. Yes, sir.

Q. How long have you been a letter carrier?

A. 13 years.

Q. In the course of your being a letter carrier have you carried mail to Walter Bergmann?

A. Yes, sir.

Q. What route was that that you had when you carried mail to him? A. I beg your pardon?

Q. What route was that? A. 24.

Q. 24? A. Yes, sir.

Q. Is that the same route you are still on? [264]

A. No. 24. I have been there three years.

Q. How did you happen to meet Mr. Bergmann?

A. The same as I meet all my patrons, in the line of duty.

Q. I am having trouble hearing you, Mr. Mitchell; I am sorry. Could you talk a little louder, please?

A. Yes, sir.

(Testimony of John W. Mitchell.)

Q. How did you happen to meet Mr. Bergmann?

A. The same as I do all my patrons, in the line of duty.

Q. That is, you carried mail to him?

A. Yes, sir.

Q. Now, did you take notice of the—how many times a week Mr. Bergmann got mail while you were delivering mail to him? A. Yes, I did.

Q. What was his average delivery or, as you call them, stops, I believe?

A. Stops or deliveries, either one.

Q. About how many a week?

A. About twice a week.

Q. Pardon me? A. About twice a week.

Q. Now, did you notice from the inscriptions on the envelopes where the mail had come from?

A. Yes, sir; I did. [265]

Q. Now, where did Mr. Bergmann get mail that you observed from the inscription on the envelopes?

A. Most of his mail came from the Hutton Brokerage Company in Long Beach. I think it is on First Street. He got some mail from some insurance company. He also got mail from the Federal Government. He also got mail from the oil companies—some oil company. I am not positive what one.

Q. Would it have been the General Petroleum Company?

A. The General Petroleum Company, I think.

Q. Now, did he ever get mail from foreign countries? A. He did.

Q. From what country? A. From Germany.

(Testimony of John W. Mitchell.)

Q. Now, do you recall about how much mail he received from Germany while you were calling on him or carrying mail to him?

A. He received two letters in the last three years.

Q. Do you recall anything about the postmark on the letters? A. I do.

Q. How were they postmarked?

A. They were postmarked from his mother, Mrs. Bergmann.

Q. Now, did you ever deliver him any German——

Mr. Dean: Just a moment, please. I ask that the last answer be stricken as a conclusion of the witness. [266]

The Court: What is it?

Mr. Dean: It is concerning the postmark and he said it came from his mother. I don't believe this man is competent to so state.

The Court: You may state the name it had. Do you know the German word for mother?

The Witness: Mutter.

The Court: Was it written on the outside of the envelope?

The Witness: It was written "Mrs. Bergmann."

The Court: What is the German for Mrs.?

The Witness: It was written "Mrs." It wasn't written in German.

The Court: It was written "Mrs."?

The Witness: It was written in English.

The Court: Mrs. so and so?

The Witness: "Mrs. (some initial) Bergmann."

(Testimony of John W. Mitchell.)

The Court: But you didn't know it was his mother?

The Witness: Walter told me it was his mother.

The Court: All right.

Q. By Mr. Jacobson: This mail from Germany had "Mrs. (some initial) Bergmann"?

A. Mrs. Bergmann in the return address corner, yes.

Q. Do you remember what the return address was? A. No, I don't.

Q. Did you ever discuss these envelopes from Germany with Mr. Bergmann? [267]

A. Did I what?

Q. Did you ever discuss who this person was?

A. Not at the time, no.

Q. But at any time have you discussed that?

A. The last one he received I imagine was about a year and a half ago and I asked him if he ever heard from his mother—oh, about seven months ago, I would say—and he said——

Mr. Dean: Just a moment, please. I am going to object to the balance on the ground it is hearsay.

The Court: Yes.

Q. By Mr. Jacobson: Do I understand you had a conversation with Mr. Bergmann about letters from his mother?

A. No, I just asked if he had ever heard from his mother and he said——

Mr. Dean: Just a moment. I object to the balance as a conclusion of the witness.

(Testimony of John W. Mitchell.)

Q. By Mr. Jacobson: Had you ever delivered any——

The Court: He has already testified that he delivered letters which he was told were from his mother. I will allow that to stand. What he told about his mother, the objection will be sustained at the present time.

Q. By Mr. Jacobson: Did you ever deliver any magazines of any kind to his place?

A. No magazines and no papers.

Q. No periodicals or papers? [268]

A. No, and no advertising matter.

Q. Pardon me?

A. No advertising, no periodicals, not anything but first class mail.

Q. That is the only kind of mail you ever delivered to him?

A. That is all he ever got.

Q. Did you and Mr. Bergmann ever have any conversations as you delivered the mail?

A. Just on generalities, is all.

Q. That is, you passed the time of day and went about your business? A. That is all.

Q. Did you ever hear any of the neighbors express any opinions about Mr. Bergmann?

Mr. Dean: Just a moment. I object to that as being irrelevant and calling for hearsay testimony.

The Court: I don't think any expression by the neighbors would be proper if you wanted to prove bias or prejudice of any particular person. The

(Testimony of John W. Mitchell.)

question can't be determined by his reputation in the community.

Mr. Jacobson: I was only laying that as a foundation, your Honor. My next question is if he recalls who these neighbors were who made such remarks. I don't know if they were any of the witnesses who appeared here or not.

The Court: Well, I don't see the materiality of it. [269]

You may take one of these persons who testified and ask him if he had ever reported him. I don't know whether they would report to the postman or not. The postmen in Long Beach are friendly as well as other people. I didn't know that they went on a visiting tour every time they delivered mail.

Mr. Jacobson: I think it is a small town within itself where Mr. Bergmann lives, your Honor.

The Court: I don't know what the object is. If you tell me what your object is, it may be perfectly all right.

Mr. Jacobson: My object was to establish that this witness could establish that some of his neighbors, among whom may be witnesses who appeared against him were prejudiced against Mr. Bergmann and envious of him and had so stated to him.

The Court: Well, I don't know. I don't see where that is any different. Some people are envious of anybody that is successful. Now what has that got to do with it?

(Testimony of John W. Mitchell.)

Mr. Jacobson: I had the idea, your Honor, that none of the witnesses who have testified as to Mr. Bergmann being a German sympathizer *were* naturally admit that they are activated by a deep dislike for him; and if I can prove it by other witnesses, I think the Court could be informed of that fact.

The Court: You have a complete list of them. If not I will let you borrow Mr. Summers' minutes and you will find [270] a list of all the persons who testified. You can go down the line and ask him if he ever heard any of these people express any dislike about him, but to ask in a general way an impeaching question of that character is not proper.

Q. By Mr. Jacobson: Mr. Mitchell, do you know Mr. and Mrs. Fred H. Huggins? A. Yes, sir.

Q. Are they on your route? A. Yes, sir.

Q. Have they conversed with you about Mr. Bergmann?

A. Well, I wouldn't exactly call it conversation.

Q. Have they ever made any remarks to you about him?

A. They made a remark one morning when there was a little talk going around the neighborhood of what has come up now; wanted to know what I thought of that damned dutchman. That was his exact words.

Q. That was Mr. Huggins' statement to you?

A. Yes, sir.

Q. Do you know Emma V. Thiessen? Is she on your route? A. Thiessen?

Q. Yes.

(Testimony of John W. Mitchell.)

A. I know a Mrs. Thiessen on American Avenue, but I have never talked with her.

Q. Do you know Mrs. Kinder? Is she on your route? A. Yes, I do.

Q. Has she ever made remarks to you about Mr. Bergmann? [271] A. No, she never has.

Q. Do you know Mr. Vern V. Graham, the police officer? A. Who?

Q. Graham, Vern Graham?

A. No, I don't.

Q. Mr. Haschkae; is he on your route?

A. What is the name?

Q. Jules Haschkae; some people call him Julius Haschkae.

A. He has moved off there now.

Q. He was on your route at one time?

A. I did know him, but he has moved away.

Q. Was that some time ago? A. Yes, sir.

Mr. Jacobson: That is all.

Mr. Dean: Is that all the direct examination?

Mr. Jacobson: Yes.

Cross Examination

By Mr. Dean:

Q. Mr. Mitchell, of course you have no way of knowing what mail Mr. Bergmann received which would have been sent to him General Delivery in Long Beach?

A. I don't know anything about General Delivery at all.

Q. In other words, he might have received any

(Testimony of John W. Mitchell.)

number of letters General Delivery that you would know nothing about? [272]

A. Special delivery, general delivery, the box section. There are several different ways of getting mail.

Mr. Dean: I think that is all the cross examination, your Honor.

The Court: Step down.

(Witness excused.)

JOHN HORAN,

called as a witness by and in behalf of the defendant, having been first duly sworn, was examined, and testified as follows:

The Clerk: What is your name?

The Witness: John Horan.

The Clerk: H-o-r-a-n?

The Witness: Yes, sir.

Direct Examination

By Mr. Jacobson:

Q. Mr. Horan, you live at 51 Santa Clara Avenue, Long Beach? A. Yes, sir.

Q. Is that right? A. Yes.

Q. Do you own that property. A. Yes, sir.

Q. How long have you lived there?

A. Over 19 years.

Q. About 19 years? A. Yes. [273]

Q. Was it about 1923 when you moved in?

(Testimony of John Horan.)

A. Yes.

Q. Now, how long a time have you known Mr. Bergmann?

A. Well, I have known him since 1923.

Q. That is, you met him about when you moved in yourself?

A. He was in there before I come to Long Beach, that is, to Santa Clara Street.

Q. When you moved in Bergmann owned a piece of property where? A. Across the street.

Q. During these last 19 years have you seen quite a bit of Mr. Bergmann?

A. Well, I have seen him a lot. Sometimes he wasn't there. He would go away for awhile, and go to Los Angeles, but I have seen him dozens of times, maybe, during the day—hundreds of times, as far as that goes.

Q. It would be rather difficult for you to tell how many times? A. I couldn't tell you.

Q. Does Mr. Bergmann come over and visit with you occasionally?

A. Why, no. I used to go around that way and see him work. He is a great worker around here. He has come over sometimes.

Q. Have you had a great many conversations with him in these years? [274]

A. I have, yes, sir.

Q. Now, directing your attention to Mr. Bergmann's citizenship in the United States, do you recall when Mr. Bergmann became a citizen?

(Testimony of John Horan.)

A. He told me, if I must be correct, about four or five years ago.

Q. Four or five years ago?

A. About that time. Four or five, I would say. He told me he was a citizen and he was very proud of it.

Q. At that conversation was anybody besides you and Mr. Bergmann present?

A. How's that?

Q. Was anybody besides you and Mr. Bergmann present when he told you that?

A. No, I don't think there was.

Q. Where did it take place?

A. Right outside on the sidewalk.

Q. I don't hear you.

A. On the sidewalk, just on the side of his property on Santa Clara there.

Q. On one side of his property, the west side?

A. That would be the west side.

Q. That faces the front side of your property?

A. Yes.

Q. Your property fronts east and Mr. Bergmann's property fronts south? [275]

A. Yes.

Q. Did you ever talk with Mr. Bergmann about Germany? A. Sometimes.

Q. Do you recall any years or months when you did have a talk about Germany? Just answer that yes or no.

A. Well, I talked to him about—he told me that his mother was over there.

(Testimony of John Horan.)

Q. Do you remember when that was?

A. What month?

Q. No, I mean in the term of years, or was it recently or a long time ago or when?

A. Well, it was quite a while ago.

Q. With reference to him telling you he had become a citizen, would you say it was before that or after that?

A. It was before that, I believe.

Q. Were you and he together alone again, or was someone else along with you?

A. There was nobody, just I and him.

Q. Is that all he said, or do you recall now anything more?

A. He told me his mother was there and he sent her money. He said that he would leave his property to the Salvation Army and the City and the Y.M.C.A.

Q. Now, you are mentioning some conversation wherein he spoke about what disposition he would make of his estate? A. Yes. [276]

Q. Can you place the date of that or the year?

A. I can't. I don't know the date.

The Court: Where was he going to go? Did he tell you?

The Witness: No, your Honor, he didn't

The Court: What brought up the problem? He is a young man. What brought up the problem of his willing the property?

The Witness: He was telling me he would like to lease it and that he would like to lease it to somebody and go away for awhile.

(Testimony of John Horan.)

The Court: Go where?

The Witness: I don't know.

The Court: All right.

Q. By Mr. Jacobson: During the time you have known Mr. Bergmann he has gone on South Sea trips, hasn't he?

A. Well, I heard he went there.

Q. That is, he went away on some trips?

A. He went away.

Q. Did you ever see his collection of shells and things like that? A. No.

Q. When Mr. Bergmann talked about his mother, I didn't understand whether you said he said he sent her money or not? A. He sent her money.

Q. In that same conversation did he make any remarks as to whether he had sent money to Germany or any other foreign country? [277]

A. No, he didn't tell me anything.

Q. He didn't say anything about it.

A. No.

Q. Have you ever had any conversation over these many years with Mr. Bergmann about the United States? That is, what he thought of the form of government here?

A. No, not beyond getting papers, getting his papers; what I told you.

Q. He mentioned getting those to you as you previously stated?

A. Yes, sir.

Q. When the campaign of isolation against in-

(Testimony of John Horan.)

tervention was going around, did Mr. Bergmann talk to you about that?

A. About elections, you mean?

Q. You remember about two years ago, or perhaps a year and a half ago the America First Committee was sending out speakers such as Senator Wheeler and Colonel Lindbergh advocating non-intervention in the European war and other people were advocating intervention. Do you remember that?

A. No; I never talked to him about that.

Q. He never talked to you about it?

A. No.

Q. Did Mr. Bergmann ever tell you about whether he had any brothers or sisters?

A. No, he didn't.

Q. Do you know Mr. Huggins? [278]

A. I do.

Q. How long has he been down there?

A. About two years; maybe a little more.

Q. What is the name of that court that he has?

A. Oh, the Henrietta.

Q. The Henrietta Courts? A. Yes.

Q. That is almost opposite yours, isn't it?

A. It is about 30 feet difference. Across the street.

Q. Have you observed any difficulty between Mr. Bergmann and Mr. Huggins over Bergmann's tenants?

A. Why, yes. He was trespassing——

Mr. Dean: Just a moment, please.

(Testimony of John Horan.)

The Witness: ——on the property there.

Mr. Dean: Just a moment, Mr. Horan. I object to this if it is a conclusion. If Mr. Horan saw some altercation there, I have no objection.

Q. By Mr. Jacobson: Have you seen any indication of any actual difficulty between Bergmann and Mr. Huggins?

A. Well, nothing beyond his tenants was trespassing on his property there.

The Court: Whose tenant was trespassing on whose property?

The Witness: Mr. Huggins runs a court there and——

The Court: Well, did you hear any argument between Huggins and Bergmann here about that fact? [279]

The Witness: Well, there were children in the courts and they used to go in there and, I guess, Mr. Bergmann didn't want them there.

Mr. Dean: I object to that.

The Court: Did he hear them say anything. That is the point.

Q. By Mr. Jacobson: Did you hear anything?

A. Hear Mr. Bergmann or Mr. Huggins?

The Court: Yes.

The Witness Well, no, I didn't, beyond that.

The Court: You saw Mr. Bergmann chase the children off the property. Is that the idea? Or tell them to stay in their own back yards?

The Witness: That is something like it.

(Testimony of John Horan.)

The Court: Well, most people do that in neighborhoods where there are children.

You didn't hear Mr. Huggins and Mr. Bergmann have any words over it, did you?

The Witness: No, I didn't.

The Court: I see.

Q. By Mr. Jacobson: Did you ever talk with Mr. Huggins about Mr. Bergmann?

A. No, not that I know of.

Mr. Jacobson: I think that is all the questions I have, your Honor. [280]

Cross Examination

By Mr. Dean:

Q. Mr. Horan, you have stated about the time Mr. Bergmann got his citizenship papers that Mr. Bergmann said he was glad of it? A. Yes.

Q. Was that all that was said?

A. Well, he said he would like to be a citizen. He told me he had his papers.

Q. Yes.

A. And he said, "I am glad of it."

Q. Did he say anything else that you recall, or was that all he said?

A. I believe that is all. I don't believe there was anything more I could think of.

Q. In other words, he didn't tell you why he was glad of it if that was all he said?

A. He was glad to be a citizen.

Q. I mean, did he tell you why he was glad?

A. Well, he told me that in the elections here it was very bitter, but the next day everybody was

(Testimony of John Horan.)

shaking hands, and that they don't do that in the old country.

Q. He didn't tell you why he was glad other than what you said? A. No.

Q. In other words, he might have been glad to get them [281] for business reasons, so far as you know from that conversation?

A. I don't know anything about that, sir.

Mr. Dean: That is all.

Redirect Examination

By Mr. Jacobson:

Q. What did you say Mr. Bergmann said about shaking hands?

A. I didn't get you that time.

Q. After an election you said something about shaking hands.

A. Oh, I said that he said in this country they were very bitter while election was going on, but the next day they were all shaking hands with each other.

Q. Did he like that, did he say?

A. He liked that, yes.

Q. Did he compare that with what happened in Europe?

A. In the old country he said they didn't do that; they keep their bitterness, or whatever you call it.

Mr. Jacobson: No further questions.

Mr. Dean: No further cross.

Mr. Jacobson: That is all, Mr. Horan.

The Court: All right, sir.

(Witness excused.)

The Court: Call your next witness.

Mr. Jocobson: Mr. Dungen. [282]

JOE F. DUNGEN,

called as a witness by and in behalf of the defendant, being first duly sworn, was examined, and testified as follows:

The Clerk: Please state your name.

The Witness: Joe F. Dungen, D-u-n-g-e-n.

Direct Examination

By Mr. Jacobson:

Q. Mr. Dungen, you live neighbors to Mr. Horan?

A. Yes, sir; next door neighbors.

Q. Next door neighbors? A. Yes, sir.

Q. How long have you lived at 41 Santa Clara Avenue? A. Since May 17, 1923.

Q. When you came down to that district was Mr. Bergmann there?

A. Yes, sir. He was filling up the lots there. There was nothing but sand around. He was working there every day.

Q. And of course, these courts of his hadn't been built yet, had they? A. No.

Q. Did you get acquainted with Mr. Bergmann?

A. Yes. I put in some dirt and went and borrowed his wheelbarrow just a few days after he was there to fill up the lawn.

(Testimony of Joe F. Dungen.)

Q. That is, you got acquainted by borrowing a wheelbarrow? [283] A. Yes.

The Court: I know you turned it back.

The Witness: I sure did.

The Court: You wouldn't be friends if you hadn't.

The Witness: Yes; I certainly did.

The Court: All right.

Q. By Mr. Jacobson: Does the place you run have a name?

A. The Blue Bird Courts.

Q. The Blue Bird Courts? A. Yes.

Q. Now, did you ever talk and visit with Mr. Bergmann over the years?

A. Oh, I visit with him quite often. You know, I go down there at nights. I live by myself and he lives by himself and I go to visit with him.

Q. Would he ever come and visit you?

A. Oh, yes.

Q. Both of you are single men, are you?

A. Yes, both single. He is single and I am single.

Q. So you became fairly good friends?

A. Oh, yes.

Q. May I ask you to give your age, Mr. Dungen?

A. Oh, I am 66. Was 66 on the 13th day of September, the same day as Pershing.

Q. You and General Pershing have the same birthday? [284] A. Yes.

Q. Did you ever talk with Mr. Bergmann about his having become a citizen? A. Oh, yes.

(Testimony of Joe F. Dungen.)

Q. Did you ever talk with him before he became one or after?

A. Oh, I talked with him lots before, and when he became a citizen he said, "Well, I got my citizenship papers, and I am glad I am a United States citizen."

Q. Were just you and he talking?

A. Yes, of course.

Q. Where did it take place if you recall?

A. Over there at his place.

Q. Give me as best you can what you said and what he said; all that you can remember.

A. Well, now, that is hard to do. That was in '37, I believe, when he got his citizenship papers.

Q. That is correct.

A. So I don't remember all the conversation we had. But I know he said he was glad he was a United States citizen. I remember that well. He said, "I have got my citizenship papers now."

Q. Did he give any reason as to why he was glad?

A. Well, he wanted to become a citizen of the United States.

Q. Now, did the expression on his face indicate he was [285] glad? A. Yes, sir.

Mr. Dean: Just a moment, please. I object to that as calling for a conclusion of the witness.

The Witness: Well, he did.

The Court: All right.

Mr. Dean: I ask that that be stricken.

The Court: That may be stricken.

(Testimony of Joe F. Dungen.)

Q. By Mr. Jacobson: Had you known before this day he told you—had you known he was applying for papers before he told you?

A. Yes. He told me he had applied to get citizenship papers. That was—oh, I just don't know how long ago that was—a couple of years before he got his citizenship papers, I am pretty sure, and he said he wanted to become a citizen.

Q. Just the two of you alone again?

A. Yes.

Q. Now, can you give us what you said and what he said about planning on becoming a citizen?

A. Well, he said he wanted to become a citizen of the United States. That is the best I can tell you what the conversation was, that he wanted to become a citizen.

Q. I know you didn't write all this conversation down at the time—— A. No, I didn't.

Q. ——that it is just what you remember after all these [286] years.

A. Yes, sure; it is a long time, you know.

Q. Did you ever have any talks with Bergmann about, what shall we say, the makeup of the United States Government, the general makeup of it, or the plan; how he liked or disliked it?

A. Well, he liked this country, I know. He always said so.

Mr. Dean: Just a moment. I ask that that be stricken.

The Court: Yes.

(Testimony of Joe F. Dungen.)

Q. By Mr. Jacobson: Just answer that yes or no, Mr. Dungen. A. Yes.

Q. Did you have more than one conversation about that?

A. Oh, yes, but how many I couldn't tell you.

Q. Well, can you tell me about the years?

A. Well, possibly in '36 or somewheres along in there.

Q. Well, now, what did Mr. Bergmann say about his opinion of the United States as a form of government?

A. Well, he liked the way—well, the way the laws and everything was in the United States. He liked it better than anywhere else, something to that effect. That is the reason he wanted to become a citizen.

Q. Did he ever talk to you about militarism?

A. No.

Q. He never did? [287]

A. No. I don't remember it.

Q. Did he ever tell you about any of his family, what his family consisted of?

A. He was talking about his mother once who lived in Germany; and I think he said he had a brother somewhere. I forget now where it was, but it has been quite awhile ago when he was telling me about that. His mother was in Germany.

Q. Was anything said about Mr. Bergmann going to visit her sometime?

A. He did say he would like to see her, but not

(Testimony of Joe F. Dungen.)

as long as there was a war going on, or something to that effect.

Q. Did you ever have any visits or talks with Mr. Bergmann after the United States got into the war last December? A. Oh, yes.

Q. Where did those conversations take place?

A. Over at his place and over at my place.

Q. You don't get around very much now, do you, Mr. Dungen?

A. No, I don't. I am crippled and can hardly walk.

Q. Who was present?

A. There was nobody but me and him.

Q. Can you place about how long after the attack at Pearl Harbor?

A. Oh, it was just—well, maybe a week or so.

[288]

Q. What was said by you and what was said by him as to the war or as to Pearl Harbor?

A. He was in hopes that the United States would soon clean up on the Japs and on Hitler, something to that effect; but then just how it all was, I don't know.

Q. At any rate he didn't express his approval of Japan doing what it had done?

Mr. Dean: I object to that on the grounds it is leading and also calling for a conclusion.

The Court: Yes.

Q. By Mr. Jacobson: Was any discussion had about Japan having made this attack on Pearl

(Testimony of Joe F. Dungen.)

Harbor and what he thought of it? Did he say anything about that?

A. Oh well, he said he hoped the United States would soon clean up on them. I know that.

Q. No, you have mentioned. Did you and Mr. Bergmann ever talk about Hitler?

A. Well, we would have to clean him up, too.

Q. That was the same conversation?

A. Yes.

Q. Did you ever talk about Hitler before Pearl Harbor?

A. Oh, I don't remember. I guess maybe we did. I couldn't say.

Q. Do you have any recollection; and definite recollection of having discussed Hitler?

A. No, I haven't. [289]

Q. Did you ever have any conversation with Mr. Bergmann in which he spoke of what disposition he was going to make of his holdings when he died?

A. Yes. He told me—I don't know how many times—that he was going to will it to the YMCA, the Salvation Army and the City of Long Beach, the——

Q. Did you ever see his collection of shells and things like that?

A. No, I never did. He had that in a garage and I never did go in there.

Q. They are packed up in boxes, are they?

A. Yes, sir.

Mr. Jacobson: I think that is all, Mr. Dean.

(Testimony of Joe F. Dungen.)

Cross Examination

By Mr. Dean:

Q. Mr. Dungen, you stated you have been laid up pretty much of late. Is that right?

A. What?

Q. You have been laid up pretty much of late?

A. Yes, but I go around with crutches. You know, it is right on the same street.

Q. You don't have any clear recollection of what exactly was said by Mr. Bergmann at these conversations that you have told us about, do you, Mr. Dungen? In other words, you are not positive he used certain words or as to the exact language that Mr. Bergmann used when he talked with you? [290]

A. Well, I don't understand what you mean.

Q. Well, I mean is your memory clear?

A. Oh, yes, sure.

Q. Now, you said in speaking about Hitler, "He said something to that effect." A. Yes.

Q. Well, now, do you remember exactly what he did say, the exact words?

A. No, I don't remember this because it has been quite awhile ago.

Mr. Dean: I think that is all the cross examination.

The Court: All right, step down, sir.

(Witness excused.)

The Court: Call your next witness.

Mr. Howser: Mrs. Starks.

THELMA STARKS,

called as a witness by and in behalf of the defendant, being first duly sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: Thelma Starks.

The Clerk: S-t-a-r-k-s?

The Witness: Yes.

Direct Examination

By Mr. Howser:

Q. Mrs. Starks, where do you reside?

A. 2227 East Ocean, Long Beach. [291]

Q. How long have you resided in the City of Long Beach?

A. I have lived there 13 years. I beg your pardon, I have lived there 18 years.

Q. Are you employed?

A. I am in the employ of the City since an appointment in 1929. I am in the office of the City Prosecutor.

Q. You are in the office of the City Prosecutor?

A. Yes.

Q. Your official capacity there is what?

A. I have charge of the Social Service work, particularly the collection of support for children, so-called City Mother.

Q. Do you know the defendant, Walter Bergmann? A. Yes, I have known him.

Q. How long have you known him?

A. I have known him for approximately 12 years.

(Testimony of Thelma Starks.)

Q. Do you recall the place of first meeting Mr. Bergmann?

A. Yes, it was a social function, I believe, in the fall of 1932.

Q. What occasioned you to remember meeting him at that time?

A. It was at a dance and we were introduced prior to the playing of the Blue Danube Waltz, a Strauss waltz, and we had many dances together that evening. The playing of [292] those particular pieces brought to the attention of both of us our mutual German extraction.

Q. Did anything particular occur on that evening?

A. Yes. Mr. Bergmann told me that, on the day following or shortly he was leaving for Tahiti.

Q. Did he tell you for what purpose?

A. Yes. He was going on an archeological search. That is, he was interested in a collection of shells and archeological specimens.

Q. Now, did anything else occur on that evening that you recall?

A. Yes. Mr. Bergmann professed his admiration for me personally, regretting he was leaving shortly, and asked me to accompany him. He proposed to me.

Q. Did you accept his proposal of marriage?

A. No, I did not.

Q. Now, when did you next see Mr. Bergmann?

A. After his return from the South Sea Island trip. He came into the office.

(Testimony of Thelma Starks.)

Q. Did you have occasion to see him occasionally?

A. Yes. Subsequent to that time he came to the office frequently. It was during the period when the Long Beach Harbor was being developed and Mr. Bergmann was vitally interested in it.

Mr. Dean: Just a moment. I object to that as being a conclusion of the witness. [293]

The Court: Fix the time.

The Witness: That was after 1934. It was between 1934 and 1939, during those years intervening.

Q. By Mr. Howser: Now, the Harbor was open to oil development during what year, to your knowledge?

A. I believe that was 1934, 1935. It was during the time there was a great deal of litigation as to the "One well to the acre" proposition. Mr. Bergmann was interested in that.

Q. During that period of time, regardless of the year, Mr. Bergmann frequented your office, did he?

A. Yes. He had occasion to frequent our office often because of his interest in that particular proposition.

Q. Did you have occasion to discuss with him or did you have conversations with him during that time?

A. Yes, because of his frequent visits. In addition to my duties as social worker, I contact everybody coming into the office.

Q. Approximately how many conversations

(Testimony of Thelma Starks.)

would you say you had with him during that time?

A. On an average of six a year or more.

Q. Can you tell us who was present during these conversations?

A. Whoever might happen to be waiting in the office at that time to speak to the attorney, but our conversation for the most part was more or less private because of the size of [294] the office and those waiting would be at benches, whereas he would be standing near my desk.

Q. What was the nature of those conversations?

A. They were general for the most part. He was very proud of his collection. I was very much interested in it myself. He brought into the office some valuable specimens. We talked of things in general for the most part, things that would be becoming and acceptable to office conversation.

Q. Now during that same period of time did you have any other conversations with him?

A. Frequently he would express his views as to current events and things of the day.

Q. Well, was there any mention of this proposal of yours before?

A. Yes, he has always referred to it regretfully on many occasions.

Q. What did he say, Mrs. Starks?

A. He has gone into a review of his life which is quite obvious to anyone who has heard the testimony to the effect that he is still a single man, and he regrets very much he has missed the happi-

(Testimony of Thelma Starks.)

ness a home, a wife and children would afford him, particularly in this country.

Q. Now, do you recall any conversation with Mr. Bergmann about his citizenship papers?

A. Yes, I do specifically. I hadn't seen him for some time and—— [295]

Q. Do you recall when that conversation was?

A. It was very soon after he received the papers. I was prompted as to the date, possibly about 1937, about three or four years ago.

Q. About 1937?

A. In so far as I recall.

Q. Where did this conversation take place?

A. It was a chance meeting. As I said, I hadn't seen him for some time and I met him just outside the City Hall.

Q. Where?

A. Immediately in front of the City Hall. He approached me rapidly—that is, he was going some place and I was hurrying to the bank—with his hand extended and he said, "Well, finally I am an American." And he said it in a very enthusiastic manner.

Mr. Dean: Just a moment.

Mr. Howser: That may go out, your Honor.

Q. Did you observe the expression on his face at the time he said that?

A. Yes, I did. He was happy and he looked at me very intently for approval.

Q. Do you remember having a conversation with

(Testimony of Thelma Starks.)

Mr. Bergmann approximately during the year 1939, when the war first broke out in Europe?

A. Yes, I remember one time. [296]

Q. Where was that conversation, Mrs. Starks?

A. My encounters with him were always on the street near and about the City Hall, both of us having our business downtown.

Q. Do you recall that particular conversation as to place?

A. On Pine Avenue near Broadway.

Q. Who was present?

A. The public in passing. It was on another of these chance meetings.

Q. What conversation took place at that time?

A. It was very brief and to the effect that he regretted exceedingly that war again was existent.

Q. Did he make any mention about the United States' participation in it?

A. Not specifically that. He seemed grieved.

Mr. Dean: Just a moment, please. This is a conclusion of the witness and I object to it.

The Court: What did he say?

Q. By Mr. Howser: Just tell us what he said.

A. "I regret from the bottom of my heart that this war condition exists." It was the equivalent of that.

Q. Have you ever had occasion to discuss with him subjects of intervention or isolationism?

A. Frankly——

Q. Just answer that yes or no, please. Have you? A. Yes, briefly.

(Testimony of Thelma Starks.)

Q. When was this?

A. Upon those chance occasions when we would meet and converse for a few minutes.

Q. Before or after Pearl Harbor?

A. Prior to Pearl Harbor. [298]

Q. Can you tell us approximately how much in time previous to December 7th of '41 it was?

A. Within the year preceding it.

Q. I see.

A. Approximately a year preceding it.

Q. Can you tell us where this conversation took place?

A. I believe it was in the office. He came into the office to the Building Department, and while in the Building Department came to inquire as to my welfare because he hadn't seen me for about a year.

Q. What discussion did you have relative to those subjects at that time?

A. At that time I remember he mentioned admiration for Wheeler. He mentioned Lindbergh. The conversation was unsatisfactory to the extent it was very brief, and in my position, I can't encourage things of that sort in a business office; but I do remember the matter was on his mind at that particular time.

Q. Have you ever had occasion to discuss with Mr. Bergmann the condition of his leaving Germany?

A. On our initial meeting he——

(Testimony of Thelma Starks.)

Q. Just a moment, please. Just answer yes or no. A. Yes, sir.

Q. When did that conversation take place?

A. At our initial meeting.

Q. That was on the evening that you met him in 1932? [299] A. That is right.

Q. Now, who was preesnt when you were discussing the circumstances under which he left Germany?

A. We were dancing and discussing different things.

Q. What was told you at that time?

A. It was a question on his part that I led for by making the remark that my grandfather had left Germany in his youth to escape military training. Mr. Bergmann proffered the information at that time that he was motivated by the same cause in leaving Germany to escape military training.

Q. Have you ever had occasion to see his shell collection and archaeological collection?

A. I have seen quite a few of the archaeological specimens. He brought a number of valuable things to the office and left a few as gifts.

Q. Do you recall any conversation with Mr. Bergmann as to the terms and conditions that he had those exhibits in the Los Angeles County Museum? A. I recall him saying——

Mr. Dean: Just a minute. I object to this on the ground it is hearsay. It calls for that type of testimony, the statement by Mr. Bergmann.

The Court: Well, I will overrule the objection.

(Testimony of Thelma Starks.)

Mr. Howser: May the witness answer, your Honor?

The Court: You may answer.

The Witness: I beg your pardon. Do you mind repeating [300] the question?

Mr. Howser: Read the question, please.

(Question was read.)

The Witness: I remember that he——

Q. By Mr. Howser: You may answer that yes or no. A. Yes.

Q. When did that conversation take place?

A. It was a long time ago, just after they were placed in the museum. I couldn't be definite as to the time. He has made frequent reference to them, and I am not familiar with the conditions, except he did mean to leave them to the museum.

Q. These conversations were held where?

A. In the office; in my office.

Q. Do you recall any other person being present except yourself and Mr. Bergmann?

A. No. I must confine our conversations to ourselves because of the location in which they took place.

Q. I see.

What conversation did you have at that time?

A. I am sorry, I couldn't repeat it because I don't remember.

Q. Can you give us the substance?

A. As to his collections and what he intended to do with them?

Q. Yes. [301]

(Testimony of Thelma Starks.)

A. He intended, as I recall, to——

Mr. Dean: Just a moment, please. Are you going to give your opinion, Mrs. Starks?

The Witness: No.

Mr. Dean: If you are, I am going to object.

The Witness: It was my——

Q. By Mr. Howser: What did he tell you he was going to do with them?

A. I understood he was going to leave them——

Mr. Dean: Just a moment, please. That calls for a conclusion. The witness said——

The Witness: He told me——

The Court: Just a minute. Read the question.

(Question was read.)

The Witness: He told me he was going to loan them——

The Court: Overruled.

The Witness: ——exhibits throughout the country.

Q. By Mr. Howser: Did he mention any disposition of them on his death?

A. He mentioned the Los Angeles Museum.

Q. As beneficiary?

A. For the collection.

Mr. Dean: I object to this as leading.

Mr. Howser: It is leading, your Honor. I concede that.

The Court: Yes.

Q. By Mr. Howser: Can you tell us, Mrs. Starks, if [302] there was any mention to the time

(Testimony of Thelma Starks.)

of leaving these exhibits to the Los Angeles County Museum?

A. No, I can't. I do not remember.

Q. Have you had any occasion to discuss his property? A. Yes, I have.

Q. Have you had any occasion to discuss the disposition of that property upon his death?

A. Yes, I have.

Q. When?

A. In 1939 in the company of my father. I visited this property. At that time Mr. Bergmann offered it for lease.

Mr. Dean: Just a moment, please. I object to this on the ground it calls for a conclusion of the witness.

The Court: Yes.

Q. By Mr. Howser: Mrs. Starks, you say in 1939 you and your father went to Mr. Bergmann's home? A. Yes.

Q. And that is where the apartments were?

A. That is right.

Q. What occasioned your going there?

A. I was interested in securing the leasing of this property with the idea in mind that my father, who is past 65, might be able to care for them and it would add to his income.

Q. Did you have any conversation with Mr. Bergmann at [303] that time?

A. Yes, sir, I did.

Q. Can you tell us what you said, what your father said and what Mr. Bergmann said at this conversation?

(Testimony of Thelma Starks.)

A. Mr. Bergmann offered a good lease on the place. Do you want me to go into the terms?

Q. No, the terms are not important.

A. You just want the outcome of our conversation regarding the property?

Q. No, no. During that conversation did you have any discussion as to the final disposition of his property upon his death? A. Yes, I did.

Q. Now, tell us that portion of the conversation.

A. There was to be a specification in the lease with the possibility of purchase up to five years. If Mr. Bergmann died or if his death should occur any time after that five-year period, one year after his death, one half of the property would go to me and one half of the property would go to the Salvation Army and the Y. M. C. A. I was to be one half beneficiary beyond that five-year term of the lease.

Q. Have you ever had occasion to discuss with Mr. Bergmann the subject of political matters?

A. Yes, I have.

Q. When did those occasions and conversations occur?

A. Upon his infrequent visits to the office. [304]

Q. Approximately how many times would you say you have had such conversations with him?

A. He would mention such matters.

Q. Approximately how many times would you say? A. Perhaps two or three times.

Q. During what period of time?

A. Since 1934.

(Testimony of Thelma Starks.)

Q. Previous to Pearl Harbor? A. Yes.

Q. Now, what conversations did you have in that respect?

A. I have referred to those in my previous testimony. There was nothing very definite.

Q. That is, you don't recall anything at this time in addition to what you have already testified to? A. No, I have nothing futher to add.

Q. Have you ever had occasion to discuss with Mr. Bergmann the form of government that we have in this country? You may answer that yes or no. A. Yes, sir.

Q. On more than one occasion?

A. On one occasion in particular.

Q. Do you recall when this was?

A. Yes. It was at the time he advised me that he had received his citizenship papers. The remark was passed by him that it was the land of opportunity, it had afforded him the opportunity and he had hoped that such might have [305] been afforded his children had he had the privilege of marrying and having a wife.

Mr. Howser: You may cross-examine, Mr. Dean.

Cross Examination

By Mr. Dean:

Q. Mrs. Starks, will you forgive me if I should ask you how old you were in '32?

A. I was 23.

Q. Who sponsored this dance which you and Mr. Bergmann both attended?

(Testimony of Thelma Starks.)

A. I was celebrating a birthday of a friend.

Q. It was not a dance sponsored by an organization, then, I take it? A. No, no.

Q. Your feeling for Mr. Bergmann on that evening was one of sympathy following his proposal. Is that an accurate way of putting it?

A. No, I took it lightly as any one would on such a short acquaintance.

Q. Now, as I recall, Mrs. Starks, you described the terms of the lease which said, if I am not mistaken, that you were to be made a beneficiary in some way under this lease.

A. Yes. Upon the expiration of a certain time after I had paid so much into the property and upon the expiration of one year following his death that I was to share half and half with the groups that I mentioned. [306]

Q. Yes.

A. In other words, to become part heir.

Q. Was there any description of the lease as to the sum of money you would receive, or does that depend upon the money the property would produce? A. That is right.

Q. During these conversations that you have had with him, Mrs. Starks, at these chance meetings, as you say, what would be the average length of the conversation? A. Five minutes.

Q. When you told us that Mr. Bergmann said when he received his citizenship papers that this was the land of opportunity, are you satisfied that

(Testimony of Thelma Starks.)

that is all you can recollect at this time as to what he said?

A. Yes, because the conversation was very brief.

Q. In other words, he didn't tell you what he meant by "opportunity," did he?

A. No, it was inferred to me, I was satisfied.

Mr. Dean: I am not interested in what you thought.

That is all the cross examination.

Mr. Howser: Your Honor, may I ask this witness another question?

The Court: No; I only allow one counsel to interrogate the witness. You can whisper or speak out loud to your associate counsel, but I only allow one person to question a witness. [307]

Mr. Howser: No, I was questioning this particular witness myself, your Honor.

The Court: Oh, I see.

Mr. Howser: And I overlooked the one question.

The Court: That is all right. I thought you were switching.

Mr. Howser: No, your Honor.

The Court: All right.

Redirect Examination

By Mr. Howser:

Q. Mrs. Starks, did you complete the making of this lease? A. No, I did not.

Q. Now, have you had occasion to talk to Mr. Bergmann since this proceeding that is now pending in court was filed against him?

A. Yes, I have.

(Testimony of Thelma Starks.)

Q. Where did this conversation take place?

A. Shortly after he received service he came into the office.

Q. You are referring to the City Prosecutor's office? A. Yes.

Q. Who was present during that conversation?

A. Mr. Goosner, Spanish interpreter, and Doris Ivy, secretary.

Q. They are both employees—— [308]

A. Yes, they are.

Q. ——in the office? A. Yes, they are.

Q. Will you please tell us what was said at that time?

Mr. Dean: Just a moment. I object on the ground that it is irrelevant as to what conversation he had.

The Court: I don't see the materiality of any statement made subsequent to the institution of this action.

Mr. Howser: I thought, your Honor, that the conduct of the defendant and his attitude towards this proceeding would be very important as to whether or not he had placed any value on his citizenship papers, the effect it would have upon any person who had received such papers and who had received service of such pleadings.

The Court: The very fact he denies the allegations of the complaint under oath and his offering witnesses prove he is positively defending his rights. Private expression of opinion, admissions against interest may be admitted, but declarations

(Testimony of Thelma Starks.)

in his favor after the institution of the action are not permissible because they do not bear upon the issue before the court.

Mr. Howser: I was merely under the impression that they do. If that is the Court's ruling, that is fine.

The Court: What?

Mr. Howser: I was under the impression that such would be enlightening on this general issue. [309]

The Court: There has been no testimony. The only testimony as to what he said was that he said certain things to certain people. If you want to disprove those things, all right, I have no objection; but they are self-serving declarations, not going beyond the denials here. In fact, this answer is more than an answer, as you gentlemen who wrote it realize. You didn't write a legal document. You wrote the defense as dictated by him. He even gave his religious beliefs and what his beliefs are concerning Jesus Christ which are immaterial. You don't have to believe in Jesus Christ in order to be a citizen of the United States. All of that is in the answer; so I can't see how his statement to this witness of whom he thought sufficiently to ask her to marry him long after all the acts that have been testified to have taken place is material. If you want it, I will let you go into it, but it doesn't rise above the denial.

Mr. Howser: I will withdraw it, your Honor. That is all.

(Testimony of Thelma Starks.)

Mr. Dean: No further cross examination.

The Court: All right, Mrs. Starks.

(Witness excused.)

Mr. Dean: Your Honor, I understand counsel is going to offer a deposition. Is it the practice of this court to have it read question by question in the record?

The Court: In this particular case I would rather have it read. In an ordinary case I would usually say, "I can [310] read it faster than you can." However, I think the reading should be at the conclusion of the other testimony, all the oral testimony.

Mr. Jacobson: I was only inquiring if Mr. Dean had any objection to the deposition. Now, if you want it read, I will hold that up until the conclusion of the case.

The Court: Yes. I think the dosposition is Mr. Kingman's.

Mr. Jacobson: Yes.

The Court: I know it is filed here. I have looked at it. That is Mr. Kingman's deposition, I believe.

Mr. Jacobson: Yes.

The Court: Of Cavalier and Company, investment brokers and bankers.

Mr. Jacobson: He is now with Plomb Tool.

The Court: I happen to know the gentleman. I handled a case on appeal involving the Cavalier Company and he was a witness. That was when I sat on the District Court of Appeals. I can't tell

you whether he won the case or lost it. I think he lost it. I know I wrote an opinion affirming the decision of the lower court.

Mr. Jacobson: I hope that isn't an omen.

The Court: Frankly, I don't even remember what the case was about. I know it was a long opinion that I wrote and he was a witness in the trial of that case.

Mr. Jacobson: Does your Honor want to take a short recess at this time? [311]

The Court: We will take a short recess.

(A short recess was taken.)

The Court: All right, gentlemen, call your next witness.

Mr. Jacobson: Mrs. Miller.

LOTTIE MILLER

called as a witness by and on behalf of the defendant, being first duly sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: Lottie Miller.

The Clerk: L-o-t-t-i-e?

The Witness: Yes.

Direct Examination

By Mr. Jacobson:

Q. Is that Lotta or Lottie? A. Lottie.

Q. L-o-t-t-i-e? A. Yes.

Q. You live at 49 Mariposa Avenue?

(Testimony of Lottie Miller.)

A. I do.

Q. Where is that with reference to Mr. Dungen and Mr. Horan?

A. I am right back of Mr.——Huggins, did you say?

Q. Mr. Horan and Mr. Dungen.

A. I am east of them.

Q. With reference to the Bergmann property on West Seaside, where is that? [312]

A. I would be southwest, I think it is. Am I right? Let's see; well, I am right back of him, anyway.

Q. You are right back of Mr. Bergmann's property? A. Yes.

Q. You are married, are you?

A. Yes, I am.

Q. And your husband is whom?

A. Ben Miller.

Q. What business is he in, Mrs. Miller?

A. Navy police officer.

Q. Are you in any business yourself?

A. I do beauty work and I manage apartments.

Q. That is sort of a neighborhood beauty sevice?

A. Yes, sir.

Q. You do it in your own apartment?

A. Yes, I do.

Q. Is that an apartment house where you live?

A. Yes.

Q. What is the name of it?

A. It belongs to King and Colbert.

Q. King and Colbert? A. Yes.

(Testimony of Lottie Miller.)

Q. Now, have you had an opportunity to become acquainted with Mr. Bergmann in the last few years?

A. In '38; February of '38.

Q. Do you remember the circumstances of your becoming [313] acquainted with Mr. Bergmann?

A. I just went over to see him. I thought he was kind of lonesome and I made some biscuits and I took them over to get acquainted with him.

The Court: That is a nice way to get acquainted with people.

Q. By Mr. Jacobson: Well, after you had brought him the biscuits the acquaintance ripened, did it?

A. It sure did. I used to see him every day.

Q. Did Mr. Bergmann ever come to your home?

A. Yes, many times.

Q. I presume you have had lots of visits with him in the last four years?

A. Yes, we have.

Q. During any of these visits and conversations, have you ever talked about Mr. Bergmann's views on the United States?

A. Oh, he told me he was an American citizen.

Mr. Dean: Just a moment, please. Would you fix the date?

Q. By Mr. Jacobson: You should have answered yes or no. A. Yes.

Q. Do you have any specific recollection when you had these conversations?

A. About '39. [314]

(Testimony of Lottie Miller.)

Q. 1939? A. Yes.

Q. Who was present? A. My husband.

Q. And yourself and Mr. Bergmann?

A. Yes, sir.

Q. Now, give us as best you can what was said by you or by Mr. Miller or by Mr. Bergmann with reference to the subject of American citizenship.

A. Well, I just asked him if he was an American citizen and he said, "Yes, I am." He said, "I am sure proud of it."

Q. Did he say anything else? A. No.

Q. Did you reply to that?

A. I said it was just lovely.

Q. Did you ever talk to him about his views on Hitler? Just answer yes or no.

A. Well, we had talked on national and international affairs.

Q. Well, let's take international affairs first.

A. Well, it was just an every day occurrence, conversation, that is all. I was always interested in Germany because my sister-in-law was of German descent and my cousins also were of German descent. I was interested in Germany and I wanted to know something about the country. I just wanted to know about the different parts of Germany. That is all our [315] conversation referred to.

Q. That is, the way Germany looks?

A. Yes, things like that.

Q. How the people lived over there?

A. Yes, things like that.

(Testimony of Lottie Miller.)

Q. But did you ever talk about the kind of government they have, such as under Mr. Hitler?

A. He never approved of the present government.

Mr. Dean: Just a moment, please. I ask that that be stricken on the ground it is a conclusion of the witness.

The Court: That is a little broad statement. You have to be a little more specific, if you remember, Mrs. Miller.

The Witness: He said he liked our way of government and he didn't like dictatorship. He liked the way we conducted our government and the way our president ran our government and he didn't like dictatorship. Also, he said he would like to be in a country where he could vote.

Q. By Mr. Jacobson: Did he say anything else?

A. No.

Q. Did he ever talk about his own family, that is, the family he had been born into?

A. I just asked about his mother; if his mother was living, and he said yes.

Q. Did he say what contact, if any, he had with her?

A. Oh, he sent her money, was all.

Q. Was there any conversation—this question must be [316] answered yes or no, Mrs. Miller—with Mr. Bergmann in which he made any comment about having sent money to Germany other than to his mother? A. No.

(Testimony of Lottie Miller.)

Q. Was there ever any conversation with Mr. Bergman about having investments in Germany?

A. No.

Q. That is, there were no conversations?

A. No, no conversations in regard to that.

Q. You spoke of having a relative that was of German descent?

A. Yes. I have a cousin that was German, Baron Von Mandershied, but he passed away.

Q. As to yourself, are you of German descent?

A. No, I am Spanish and English.

Q. I presume born in California?

A. California.

Q. Have you ever had any talks with Mr. Bergmann since the United States got into the war with Japan, Italy and Germany? Just answer that yes or no, please. A. Yes.

Q. In any of these conversations has the subject of the war itself been discussed? A. No.

Q. Has the subject of the attack upon Pearl Harbor been discussed in any of these conversations? [317] A. No.

Q. Now, you said you had some talks on national affairs.

A. Oh, just little things in regards to the country.

Q. What particular national issue or issues do you recall having talked with Mr. Bergmann about?

A. Oh, just talking about different parts of the country, different parts of the world. This man has

(Testimony of Lottie Miller.)

traveled a great deal and I like to have people talk about those things.

Q. But I have in mind particularly national affairs of a political nature, Mrs. Miller.

A. Well, yes.

Q. Have you ever talked about them?

A. He said he didn't like dictatorship; he didn't approve of dictatorship. He liked the way our government was handled, the way our government was run, the way our President handled our government.

Q. Was there any discussion between you and Mr. Bergmann and possibly your husband at any time on the issue of isolationism? A. No.

Q. You never discussed that? A. No.

Mr. Jacobson: I think that is all, Mr. Dean.

The Court: Cross-examine. [318]

Cross Examination

By Mr. Dean:

Q. Mrs. Miller, you have testified, I believe just a few minutes ago that Mr. Bergmann told you that he liked the way our President ran the country.

A. Yes.

Q. Are you positive he said that?

A. Absolutely.

Q. Mrs. Miller, I show you a statement which purports to bear your signature. It is dated April 20, 1942. I will ask you if you have seen this before?

A. I did sign this, but I didn't read it.

Q. You have seen this before?

(Testimony of Lottie Miller.)

A. Yes, but I didn't read the statement when I signed it. I didn't read it.

Q. Well, now,——

A. But I did tell the F.B.I. man there was nothing there that hurt Mr. Bergmann.

Q. Just a moment. I think you have answered my question.

A. O.K.

Q. Any explanation you want to give to your answer, I am sure the Court will give you permission.

The Court: I don't know what is in the statement. First find out whether the statement contradicts something she is saying now. [319]

Q. By Mr. Dean: This is your signature?

A. Yes, sir.

Mr. Dean: I offer this as Government's next exhibit, your Honor.

The Court: Let me see what it is.

(Document passed to the Court.)

Mr. Dean: May I withdraw the offer for the purpose of asking an additional question?

The Court: Go ahead.

Q. By Mr. Dean: You say you visited Mr. Bergmann's apartment in a friendly and sociable way, is that right?

A. Yes.

Q. Did you ever observe any German magazines or literature around his apartment?

A. No.

Q. You never did?

A. No.

(Testimony of Lottie Miller.)

Mr. Dean: I renew my offer, your Honor.

The Court: Just a minute. Has counsel seen it?

Mr. Dean: Yes.

Mr. Howser: Mr. Jacobson has not seen it, your Honor. I did, and I tried to convey to him, with the best of my recollection, what it was.

The Court: You may take a look at it before I rule on it.

Mr. Howser: Thank you. [320]

The Court: Any objection?

Mr. Jacobson: Yes, the objection is the witness has testified she did not read the statement before signing it.

The Court: Well, I think in view of the denial you will have to lay further foundation.

Mr. Dean: Very well, your Honor.

The Court: I will admit it for identification only.

The Clerk: Government's Exhibit 3, for identification.

(The document referred to was marked Government's Exhibit No. 3, for identification.)

Q. By Mr. Dean: Mrs. Miller, was this document handed to you before you signed it?

A. He just held the book out to me like that and I just signed it. I never even read it. I said, "There is nothing there that will hurt Mr. Bergmann."

Q. Just a moment.

Did you take the paper in your hand at all?

A. No.

Q. You did not?

(Testimony of Lottie Miller.)

A. No.

Q. But you recall signing it?

A. Yes.

The Court: Let's have the paper a minute.

Look at this paper here. Is there anything there that you say you didn't say? Just read it to yourself now. I [321] think that will settle the question and lay the foundation better than anything else.

The Witness: Can I talk a little bit?

The Court: Is there anything on there? You see, that is a statement.

The Witness: Yes.

The Court: Is there anything there that you didn't actually tell the agent?

The Witness: I didn't say that he sent money back to Germany. I said he sent money to his mother in Germany and I said I was told there were magazines in the apartment. I said, "I was told there were magazines but as far as me seeing them, never."

Q. By Mr. Dean: Mrs. Miller, do you recall the visit of the agent to your home?

A. Yes.

Q. How long was he there?

A. Just a short while. I don't know how long.

Q. Can you approximate it for us? What is your best guess? Half an hour or an hour?

A. Oh, no, not over fifteen minutes.

Q. Fifteen minutes you would say?

A. Yes.

Mr. Dean: Very well, your Honor. I will renew my offer and lay a foundation later.

(Testimony of Lottie Miller.)

That is all the cross examination. [322]

The Court: All right, step down.

(Witness excused.)

The Court: Call your next witness.

Mr. Jacobson: Mr. Geiselman.

DANA D. C. GEISELMAN

called as a witness by and on behalf of the defendant, being first duly sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: Dana D. C. Geiselman.

Direct Examination

By Mr. Jacobson:

Q. Mr. Geiselman, what is your occupation?

A. Assistant trust officer of the California Trust Company here in Los Angeles.

Q. I wonder if you would raise your voice a little bit. It is hard to hear you.

A. Assistant trust officer of the California Trust Company here in Los Angeles.

Q. What is your profession?

A. Attorney.

Q. Are you admitted to practice in what states?

A. Nebraska and California.

Q. In the course of your legal career have you occupied any public office in Nebraska?

A. I was County Attorney in my home county for two terms. [323]

(Testimony of Dana D. C. Geiselman.)

Q. During what period of time was that?

A. 1912 and four years thereafter.

Q. From '12 to '16?

A. That is right.

Q. Does that office correspond to the office of District Attorney in California?

A. It does.

Q. During World War I were you in the armed forces of the United States.

A. I was.

Q. With what rank were you discharged?

A. I was an ensign in the United States Navy.

Q. Are you now an officer in the Reserves?

A. No, sir.

Q. Do you know Walter Bergmann?

A. Yes, sir.

Q. How long ago did you meet him?

A. I first saw him in 1926.

Q. That would be about 16 years ago?

A. Yes, sir.

Q. Do you recall the circumstances of meeting him?

A. At that time I either met him casually or just saw him in a transaction that was being handled by the Trust Company in which Mr. Bergmann was one of the parties. I later became acquainted with him better in 1936 which was ten years thereafter. [324]

Q. During the period of '26 to '36 did you have any particular contact with him?

A. I don't recall that I had.

(Testimony of Dana D. C. Geiselman.)

Q. Now, beginning with 1936 did an acquaintance develop, any personal acquaintance?

A. Yes.

Q. Since 1936 have you had visits or conversations with Mr. Bergmann?

A. A great many.

Q. Have you had many? Do you have any idea as to about how many?

A. Oh, maybe eight or ten a year.

Q. I suppose a good many of these were business conferences?

A. Most of them.

Q. Now, in any of these conferences or conversations were subjects other than business discussed?

A. Many times.

Q. Did you ever discuss with Mr. Bergmann his views of the United States?

A. Oh, he——

Q. Answer that yes or no, please.

A. He told me about how glad he was——

Mr. Dean: Excuse me just a moment.

The Court: You must lay a foundation for further inquiry. Fix the date first. Just say, "Yes" and he will ask you when. [325]

The Witness: Yes.

Q. By Mr. Jacobson: When?

A. Commencing in 1936 and continuing through from year to year.

Q. Had you had more than one discussion about that subject?

A. Yes.

(Testimony of Dana D. C. Geiselman.)

Q. Now, what was said by Mr. Bergmann in reference to the type of government we have here?

Mr. Dean: Excuse me just a moment. Can't we fix this a little more definite as to time?

The Court: Yes.

The Witness: Well, on many different occasions from 1936 up until probably six months ago wherein he would indicate——

Mr. Dean: Excuse me just a moment. I don't want to be difficult, your Honor, but I think this should be more firmly fixed if he is going to relate a specific statement or utterance.

The Court: He said in the last six months.

Let's allow the witness to make the general statement and then we will see if he can fix more generally the date.

Go ahead and tell us what he said.

The Witness: He would compare how liberal our form of government was to the forms of government in Europe; and what a benefit it was to be able to live under this form of [326] government as against those existing in European countries where there were the old time hatreds of one country against another that existed for generations and couldn't be erased.

He was so gratified to be able to do business and transact business with people generally here within the United States without any reflection upon him because his accent was different from ours here in the United States; and how he could rely largely upon the honesty of people here in the United States

(Testimony of Dana D. C. Geiselman.)

and the lack of vindictiveness by people because he may or may not have been of their particular race.

Throughout the many conversations he pointed out how difficult it was to transact business in Europe as compared with the ease with which we transact business here in the United States.

Q. By Mr. Jacobson: Excuse me, Mr. Geiselman. Did the subject of Mr. Hitler ever come up?

A. Yes.

Q. Do you recall any conversations in which Mr. Bergmann expressed his views of Mr. Hitler?

A. Well, he told me that he thought Hitler had the right idea as to the development of the health of the youthful people in Europe. He told me that his——

Mr. Dean: Excuse me, your Honor. Can we have the time fixed for this?

The Court: I will allow the other statement to go in because it related to your business transaction. [327]

The Witness: Yes.

The Court: But now we are getting down to specific questions on Hitler. That is important and if you can fix the date it would be better.

The Witness: I would judge that that conversation was either late in '39 or '40.

Q. By Mr. Jacobson: Where did it take place, Mr. Geiselman?

A. That took place in his home where he resided in Long Beach.

Q. Who was there?

(Testimony of Dana D. C. Geiselman.)

A. Just the two of us when I stopped there.

Q. That was late in '39 or early '40?

A. That is right.

Q. Now, will you tell the substance of what was said about Hitler?

A. Well, he said he thought he had the right idea about developing the health of the youthful people in Germany, teaching them to abstain from the use of tobacco and liquor. Bergmann was bitterly opposed to both of those things according to his expressions. He did tell me that he thought that Hitler was all wrong about trying to glorify the military side of the training of the young people in Germany due to the fact that it continually kept carrying forward the intense hatred that different countries had for each other in Europe. [328]

He told me that he didn't think Hitler could ever be considered a good leader for Germany because, first, he was an Austrian. He couldn't see the view point of the German as such, and he apparently felt and said that he thought he was doing it largely for his own personal aggrandizement. He called him "bigheaded" and expressions similar to that; sort of a hypnotic spell that he thought he was in.

Q. Did he say anything further about Mr. Hitler here in that conversation?

A. I don't recall that he did.

Q. Now, this conversation, of course, was prior to any participation by the United States in the present war?

A. That is right.

(Testimony of Dana D. C. Geiselman.)

Q. Did you ever talk to Mr. Bergmann or did Mr. Bergmann ever talk to you about what his opinion was of the European social system, castes, nobility, aristocracy?

A. Yes, he talked to me about that on many occasions.

Q. Can you recall any specific time?

A. Well, one of these times might have been the same time that I referred to when I stopped at his home and subsequent and prior thereto. I just can't recall the date.

Q. What did he say about it?

A. The substance of his statements were that he disliked the idea that just because a man was born the son of some prior great man was any reason why he should be in the upper rungs of the ladder, as he called it, regardless of [329] whether he had the ability of the foundation to be there. He disliked the class distinctions that existed in Europe. He felt that, or stated, rather, that he felt a man should progress as a result of his own ability rather than by virtue of his birth.

Q. Did he tie that last statement into anything in connection with the United States?

A. No, sir; he said—no.

Q. Now, do you remember when Mr. Bergmann got his certificate of citizenship?

A. No, sir, I do not.

Q. Did Mr. Bergmann ever tell you that he had become a citizen of the United States?

A. Yes, sir.

(Testimony of Dana D. C. Geiselman.)

Q. Do you remember when that was?

A. I don't recall that he told me when he got it, but I know he told me he was a citizen of the United States.

Q. Where did that conversation take place?

A. I am sorry, but I don't recall.

Q. You do recall there was such a conversation?

A. Yes. He told me that.

Q. Do you recall whether anyone was present besides you and Mr. Bergmann?

A. No.

Q. What, if anything, did Mr. Bergmann say about his being a citizen of the United States? [330]

A. This conversation was in 1938, as I recall it, and it occurred at a time when he told me that he contemplated returning to Tahiti or some of the South Sea Islands to pick up more shells comparable to the exhibits he had out at the Exposition Park Museum and over at the Los Angeles Museum.

He told me that by reason of the fact he was a United States citizen he would be treated with respect and consideration in those Islands far above and beyond that which a German would be treated there.

He told me how in some of those Islands they had a tendency to crowd the people of German descent off of the walk and that he being a citizen of the United States would command respect and be given consideration. It was more in the nature of a comparative statement.

(Testimony of Dana D. C. Geiselman.)

Q. You mentioned his collection of shells. You are familiar with those collections, are you not?

A. He spoke of them many times.

Q. Did you ever discuss with Mr. Bergmann what plans he was making of disposing of his estate?

A. I became quite well acquainted with him. He solicited my business advice and in return I solicited of him the possibility of the Trust Company being named as executor under his will, or if he was going to the Islands for any length of time that we be named trustee and look after his property and assets while he was away.

In this discussion of the terms of the will he told me [331] he had a will that he had drawn up himself. I suggested that some time, perhaps, that was not the best, there might be things that could be improved upon and suggested that he have counsel draw up a will and that we be named. In that conversation arose the question of the disposition of his property of which the shells in these exhibits were a part, he having told me he had loaned them to the County and to the Agricultural Association.

Mr. Dean: May we have the time of this conversation, counsel?

Q. By Mr. Jacobson: Can you give the time approximately of this discussion?

A. That was about the time that he contemplated making the trip to Tahiti, probably around 1938; although I solicited this business many times thereafter and the question of disposition of his property arose in each of the discussions. Those discus-

(Testimony of Dana D. C. Geiselman.)

sions were probably every time I met him right up until about six months ago, I would say.

Q. Well, in all of these discussions did Mr. Bergmann's plan of disposition remain approximately the same? A. It did.

Q. Will you state what he said his plans were?

A. He told me he intended to give the exhibits to the Sixth Agricultural District where he had loaned one and to the County on the other one. He told me that he was going to leave—— [332]

Mr. Dean: Excuse me a minute. May I have the date of this?

The Witness: About 1938.

Mr. Dean: I am sorry.

The Witness: About 1938.

That was the first discussion, but the discussion as to the disposition of the property occurred several times thereafter when we would discuss the terms of a proposed will.

He wanted to give the property where he lived to the City of Long Beach for a park due to a lot of work he had done there and some plants that he had brought back from the Islands that he planted and that he had acquired since.

He wanted to give a considerable portion of his assets to the Salvation Army and he wanted to give a considerable portion of his assets to the Y.M.C.A. down at Long Beach. The fact is that disposed of all of it.

Q. By Mr. Jacobson: That is, perhaps, except minor beque*aths*?

(Testimony of Dana D. C. Geiselman.)

A. He told me his mother was very old, was living in Germany and probably there wouldn't be further need for her. That was the only outside individual or place he mentioned to me about the disposition of his estate.

Q. Did he mention where his properties were located? A. Sure.

Q. What did he say?

A. I knew them. He told me where they were. He had [333] that property where he lived there and——

Mr. Dean: Just a moment: I am going to object to this as being hearsay as to where the property was located.

The Witness: I beg your pardon?

The Court: I think it is all right. Go ahead. You may answer.

The Witness: He had the real property in Long Beach and he had these stocks and bonds with the brokers over on Spring Street.

Q. By Mr. Jacobson: During your acquaintance with Mr. Bergmann did you become acquainted with his policy of investment in stocks and bonds, the type of company or the nationality of the companies?

A. He discussed with me on several occasions the purchases he had made.

Q. Do you recall any specific time?

A. Well, those purchases started shortly after December of 1936 and continued on down to probably a year or a year and a half ago.

Mr. Dean: Just a moment. I ask that that be

(Testimony of Dana D. C. Geiselman.)

stricken and I object to any further statement on the purchase of stocks and bonds by Mr. Bergmann as being immaterial.

Mr. Jacobson: May I disclose my purpose to the Court?

The Court: Yes.

Mr. Jacobson: Not to show his will, but to show what his fixed policy of investing was; investing only in American [334] owned companies.

The Court: You are meeting an issue that isn't presented here. Of course, he would invest in American companies. They are sound investments. You didn't expect him to invest in German companies, did you, that had no value except the promise of the government and only the sword of the Germany Army to support them.

Mr. Jacobson: Of course, there were Dutch, English and South American investments.

The Court: I don't think that is at issue here.

Mr. Jacobson: Very well.

The Court: I admit he is a good business man. In fact, the testimony of this witness shows he is a good business man. A man may be willing to do business with America because Americans are honest and all that and still have other ideas when it comes to politics. I can't see any materiality in this at all. I think this witness has stated the nature of his relationship. It shows me what they were talking about, what he consulted about, and that is sufficient without going into details. I don't think it is an indication of Americanism at all, a man who invests

(Testimony of Dana D. C. Geiselman.)

in American companies any more than it is an indication of lack of Americanism if he invested in foreign companies. A lot of American companies have agencies even in Germany. The Ford Company has an agency in Germany and all of the big concerns have agencies in Germany which were confiscated by the German government long before we [335] entered the war. But that isn't any indication one way or the other.

Mr. Jacobson: The only thought I had, you have to build up a picture of the man as the government has by a statement here and a statement there.

The Court: I understand that, but the government hasn't brought in anything relating to his business.

Mr. Jacobson: As I recall the testimony yesterday, the government stressed the fact that the man had great securities in Germany. As I understand it, one witness said he had enough securities in Germany to keep him all his life.

Mr. Dean: There was one statement by one witness, your Honor, that he had invested in Germany. I don't think this testimony disproves that fact, however.

The Court: Well, let's get back to the particular question. I think we took more time discussing it than it was worth. What is the question?

(Question was read.)

The Court: Well, I will tell you this: I will allow the witness to answer the question, but I don't want you to go into details.

(Testimony of Dana D. C. Geiselman.)

The Witness: We were discussing the merits Shell Oil. Mr. Bergmann stated that it was controlled largely by European countries and he wouldn't have any stocks or bonds wherein there was any influence or any ownership of the companies in Europe. [336]

The Court: Did you tell him what the ownership of Shell was; what nationality?

The Witness: No, sir.

The Court: What?

The Witness: No, sir.

The Court: Did he know?

The Witness: He said it was controlled by the Dutch Shell in Europe.

The Court: All right.

Q. By Mr. Jacobson: I don't know if I asked you this or not, but did you have any conversations about the war after the Pearl Harbor incident?

A. Not to my knowledge.

Mr. Jacobson: That is all.

Cross Examination

By Mr. Dean:

Q. Mr. Geiselman, is that the way you pronounce your name? A. Yes.

Q. You are not of German extraction, are you?

A. My father was born in Stack County, Ohio.

Q. I see; that answers my question.

Are you a member of or a sympathizer with the America First Committee, at any time, Mr. Geiselman? A. No, sir.

Q. You were not? [337] A. No, sir.

(Testimony of Dana D. C. Geiselman.)

Q. I take it that your conversations with Mr. Bergmann occurred chiefly in your office at the Trust Company? A. At his home also.

Q. Would you say you visited his home frequently?

A. I had occasion to go to Long Beach about four times a year and I would usually stop by and say hello and solicit his business.

Q. Were the associations or business dealings you had with him solely in connection with the Trust Company, or did you have some private transaction with him?

A. I had no private transactions. At the time he was discussing about going away he did offer to sell me the property that he had where he lived.

Q. Did you consummate the sale?

A. No, sir.

Q. You did not? A. No.

Q. I take it, though, at various times in your capacity as an officer of the Trust Company, you have engaged in transactions with Mr. Bergmann to your mutual profit, that is, to the profit of the Trust Company and the profit of Mr. Bergmann?

A. He was a customer of the Trust Company in the escrow department and we handled several escrows.

Q. You testified, although you haven't been able to [338] fix the date too precisely, regarding talks you had with Mr. Bergmann in which he told you of the fact that in America he could carry on busi-

(Testimony of Dana D. C. Geiselman.)

ness with people and rely upon their honesty. Did he say that? A. That is right.

Q. That he could do so without any reflection being cast upon himself. Is that right?

A. By reason of his decided German accent.

Q. He didn't make any exception to that, did he? He didn't say "except in Long Beach"? In other words, that was true with respect to all his business dealings, wasn't it?

A. He was talking generally.

Q. With respect to your conversation with him which you said occurred late in 1939 or early in 1940 concerning Adolph Hitler, you stated, if I am correct in saying this, that Mr. Bergmann stated that Hitler had done a good deal for the health of the German youth. Is that correct?

A. He felt that his plan of building up the health of the youth was a good idea.

Q. Did you have any discussion with him at that time concerning the youth of Germany in the march into Poland or the other military campaigns?

A. He was bitter about using those young men.

Q. I mean did you have any conversation with him? A. Yes.

Q. Concerning the march into Poland? [339]

A. No.

Q. You did not? A. No.

Q. Did he ever state that Hitler was a genius to you? A. He never did to me.

Q. When he referred to the caste system that you have discussed, Mr. Geiselman, he used the general term "Europe", did he not?

(Testimony of Dana D. C. Geiselman.)

A. That is right.

Q. In other words, he did not refer to any specific country in Europe?

A. He was talking about the countries in Europe.

Q. In Europe generally? A. That is right.

Q. With respect to the discussion concerning the will that you have related to us, you did not, in fact, draw a will for him, did you?

A. We did not. We don't draw wills, and I suggested he have his own attorney prepare the will and only sought the business that we be named as executors.

Q. With reference to your dicussion with him concerning a leaving of his archaeological collections, are you fairly sure that that conversation took place sometime during the year 1938, or about that time?

A. That same discussion about where he was going to leave his property came up almost invariably every time I [340] solicited for the Trust Company to be named as executor.

Q. When he said he was going to leave his collection to somebody, when was the first conversation that you had with him concerning that?

A. In 1937.

Q. 1937? A. Yes, sir.

Q. Do you recall distinctly he said he was going to leave at least a portion of it to the Los Angeles County Museum?

A. In '37 and it continued on down.

Q. He repeated that several times?

A. Yes, sir.

(Testimony of Dana D. C. Geiselman.)

Q. He was going to give them his property?

A. He was going to give them his property, yes.

Mr. Dean: That is all the cross examination.

Mr. Jacobson: That is all.

The Court: In the discussions that you had with him about Hitler youth, was anything said by either of you about the fact that the United States had a similar program devoid of the militaristic trimmings in the C. C. C. Camps?

The Witness: Judge, that was the reason he explained to me he wanted to leave so much of this property to the Y.M.C.A. as well as the Salvation Army—but particularly to the Y.M.C.A.—because it built up the health and stressed it with so much importance. [341]

The Court: I see. All right.

Mr. Dean: No further cross examination.

(Witness excused.)

Mr. Jacobson: I have another witness. Do you wish a recess, your Honor?

The Court: No, no; let's go on. How many more witnesses have you?

Mr. Jacobson: I have one more today and I think eight more tomorrow.

The Court: Let's go on with another witness.

Mr. Jacobson: Mr. Ellis.

No. 10387

United States
Circuit Court of Appeals
For the Ninth Circuit.

FRIEDRICH WALTER BERGMANN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

In Two Volumes

VOLUME II

Pages 365 to 647

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division

FILED
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Upon Appeal from the District Court of the United States for the Southern District of California, Central Division

Rotary Colorprint, 590 Folsom St., San Francisco

O. T. ELLIS,

called as a witness by and on behalf of the defendant, being first duly sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: Ellis. O. T. Ellis, E-l-l-i-s.

Direct Examination

By Mr. Howser:

Q. Where do you reside, Mr. Ellis?

A. Long Beach, California.

Q. How long have you resided in Long Beach?

A. Approximately 25 years.

Q. What is your business or occupation?

A. What do you mean by that? How I earn my living?

Q. How do you earn your living, yes.

A. Well, do I have to tell you everything? [342]

The Court: No, no; just don't start an argument here. You are starting off with a chip on your shoulder. You are a witness here. What do you do for a living; just say generally. If you are retired, say so.

The Witness: No, I am not retired.

The Court: What are you doing?

The Witness: I am a licensed real estate broker. That is one of them.

The Court: That is enough.

The Witness: All right.

The Court: That is a legitimate business.

Q. By Mr. Howser: Do you know Mr. Bergmann? A. Yes, sir.

(Testimony of O. T. Ellis.)

Q. How long have you known him?

A. Oh, approximately 15 years.

Q. Do you recall the circumstances under which you became acquainted with him?

A. Yes, sir.

Q. What were those circumstances?

A. I was putting on a subdivision down in the west end of Long Beach and Mr. Bergmann approached me to sell some palm trees that he had —he had a surplus of them—so I could have them placed around a portion of the property.

Q. Since meeting him in those 15 or 16 years, have you had occasion to converse with him on any occasion? A. Yes, sir. [343]

Q. How many times?

A. Oh, possibly one or two times a year or more.

Q. During the period of time that you have known him, has he ever engaged himself, to your knowledge, in any organization that is similar to the Nazi Bund or any other un-American organization? A. To my knowledge?

Q. Yes.

Mr. Dean: Just a moment. I am going to object to that as calling for a conclusion of the witness.

Mr. Howser: I might split the question up, your Honor, if necessary.

The Court: Does it call for his own knowledge or for a statement? Read the wording.

(Question was read.)

(Testimony of O. T. Ellis.)

Mr. Dean: I think it calls for a conclusion, your Honor, if I may say so, as to the word "subversive".

Mr. Howser: I did not use the word "subversive".

The Court: No, he said the "Bund".

Mr. Dean: Didn't you say "un-American"?

Mr. Howser: Yes.

Mr. Dean: I am sorry. I thought you said "subversive".

The Court: All right, it may be answered.

The Witness: Will you—are you ready for the answer?

The Court: Yes, we are ready.

The Witness: No, sir. [344]

Q. By Mr. Howser: Did you have occasion to have him in your home, Mr. Ellis?

A. Yes, sir.

Q. Do you recall when that was?

A. The approximate date is all.

Q. Approximately when was it?

A. I think the last time was about 1941, in the summer.

Q. Who was present?

A. Mrs. Ellis, myself and Mr. Bergmann.

Q. Did you, during that time, have occasion to discuss with him the matter of his citizenship in this country? A. Not that I recall.

Q. What conversation did you have with him at that time?

A. Oh, just a general conversation.

(Testimony of O. T. Ellis.)

Q. Was there any conversation with reference to his property?

A. Yes, yes, I think at that time.

Q. What disposition he would make of it upon his death?

A. Of the property or of the assets?

Q. Property, yes.

A. He said he had named the Y.M.C.A. and the Salvation Army as beneficiaries in his will.

Q. Have you ever had occasion to discuss with him the matter of certain British Islands?

A. Discussion to what extent? What do you mean by [345] that?

Q. As to who should own the British Islands adjacent to this country?

A. Not that I recall.

Q. Have you at any time other than—withdraw that, please.

Have you at any time discussed political matters with Mr. Bergmann?

A. Local political matters or national?

Q. National.

A. Not much of a discussion. I am not much of an arguer.

Q. It isn't a matter of arguing, Mr. Ellis. Do you recall having any conversation with him at all upon national political affairs?

A. Yes, sir.

Q. When?

A. Oh, I should say about two years ago.

Q. Where did this conversation take place?

(Testimony of O. T. Ellis.)

A. I believe that was down either on his property on the west side—I believe it was.

Q. Can you tell me who was present during the conversation? A. Just the two of us.

Q. Now, what was said?

Q. Well, you mean the exact words? [346]

Q. Well, in substance if you don't remember the exact words. A. In substance?

Q. Yes.

A. The substance of it was that we, that is, the United States, should be careful and protect our own interests and look after our own affairs here at home and not take too much of our time or energy trying to help other nations.

Q. Do you recall anything further at that time?

A. No. Perhaps there was an elaboration on that, but that is the gist of it.

Q. Do you recall at any time discussing with Mr. Bergmann the form and principles of the government of the United States of America?

A. No, I do not recall that.

Q. In your many conversations with Mr. Bergmann did he ever tell you or give you any reasons why he left Germany?

A. No, I don't recall of him ever telling me that.

Mr. Howser: Your witness, Mr. Dean.

Mr. Dean: No cross examination.

The Court: All right, step down.

The Witness: Thank you.

Judge, may I say a word?

The Court: No.

(Testimony of O. T. Ellis.)

The Witness: Thank you.

The Court: If you have anything to bring out that wasn't [347] brought out on your examination, you tell counsel. You can talk to him.

Mr. Howser: May I have a minute to see Mr. Ellis, to see what is bothering him, your Honor?

The Court: Yes, see what is ailing him.

Mr. Howser: Your Honor, Mr. Ellis did not want you to have the impression that he didn't want to cooperate or that he had a chip on his shoulder. He did not mean that.

The Court: Well, he started out that way.

Mr. Howser: That is right. That would be the inference; I agree with you.

The Court: I didn't know. I thought he was hard of hearing. He started out by telling how he wanted the oath restated, and I didn't know what it was.

Mr. Howser: That is right.

The Court: All right. I don't think any of us addressed any witness in a manner where a man must be frightened in this court. I don't even wear a robe. I am supposed to wear it, but I don't, so people can feel at home.

Step down.

(Witness excused.)

The Court: We will adjourn until tomorrow morning at 10:00 o'clock.

(Whereupon, at 5:05 o'clock P.M., November 18, 1942, an adjournment was taken until 10:00 o'clock A.M., November 19, 1942.) [348]

Los Angeles, California,
November 19, 1942,
10:00 A. M.

The Court: Are there any ex parte matters?
(No response.)
Mr. Jacobson: Call Mr. Trammell as our first witness.

GEORGE W. TRAMMELL, JR.

called as a witness by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

The Clerk: Please state your name.
The Witness: George W. Trammell, Jr.

Direct Examination

By Mr. Jacobson:

Q. Mr. Trammell, where do you reside?
A. Long Beach.
Q. You are engaged in what profession?
A. Lawyer.
Q. How long have you known Mr. Bergmann?
A. I should say about since 1937.
Q. During the period of your acquaintanceship have you had any conversations with him?
A. Yes, several.
Q. Do these conversations group themselves into any groupings? A. Three groups.
Q. What groups? [350]
A. The first group was during the time I was

(Testimony of George W. Trammell, Jr.)

City Attorney of Long Beach and during the time the city was preparing a regulatory ordinance governing the development of the harbor oil lands. I would say that was the latter part of approximately '37, 1938 and 1939, along in there.

The next time was last year, roughly between August and November, when he came to me to act as his attorney in a matter.

The next time is since this matter. I have seen him since this case has come up.

Q. That is, he came in and talked to you after the summons was served upon him in this action?

A. Yes.

Q. With reference to the conversations you had with him when you were City Attorney, I presume most of them were in your office in the City Hall?

A. Yes.

Q. What was the general nature of them?

A. Primarily with respect to the regulatory ordinance which the city either was or had adopted for the drilling of the harbor oil lands.

Q. During any of these conversations were personal matters discussed? A. Yes, sir.

Q. Did you have any discussion with him as to his being a citizen of this country? [351]

A. I don't remember at that time discussing that with him, no.

Q. Were there any discussions at that time about his political beliefs on foreign policy?

A. Not at that time.

(Testimony of George W. Trammell, Jr.)

Q. Were there any discussions with him about what disposition he intended to make of his property?

A. I believe at that time he told me he was going to leave his property to the Y.M.C.A. of one of the cities in Canada—it was either Toronto or Montreal—and the rest of it to the Y.M.C.A. here in the United States; and told me about when he had been in the Y.M.C.A. up there in Canada, about coming from—well, when he left Germany.

Q. Now, in this second period which you say occurred within the past year—— A. Yes.

Q. During what month?

A. Roughly, I would say from August probably towards the latter part of November.

Q. Of 1941? A. Yes.

Q. How many times would you say you saw him during those months?

A. I am guessing. I would say probably fifteen or twenty times.

Q. At your office in the Security Building? [352]

A. All except one. I saw him once at his property down on West Seaside Boulevard.

Q. He consulted you professionally, did he?

A. Yes, sir.

Q. On business matters? A. Yes.

Q. Now, in the course of these discussions, do you recall any discussion that turned on the question of his American citizenship? A. Yes.

(Testimony of George W. Trammell, Jr.)

Q. Can you place the time at all?

A. It was during those conversations. Which one, I don't know.

Q. Do you recall substantially what was said by Mr. Bergmann?

A. I remember on several occasions he stated that he was an American citizen and seemed to be quite proud of the fact.

Mr. Dean: Just a moment. I ask that that be stricken as a conclusion of the witness.

The Court: You had better tell us how he expressed that, Mr. Trammell.

The Witness: As I recall, there was some question relative to the use which was being made of Seaside Boulevard, which was directly in front of his property. Lumber had been piled up and was piled up out in front of his property at [353] that time, and also there was a donkey engine which was erupting quite a bit of smoke from it and going over on his property. He made a complaint to the harbor department about that and said that he was an American citizen; that it would seem to him that American citizens should have just as much right in that street as the lumber people or the harbor department. That is the best that I can remember the way it came up. I do remember that he mentioned his citizenship on several occasions.

Q. By Mr. Jacobson: Was any remark made in that conversation or any other conversation about the democratic processes?

(Testimony of George W. Trammell, Jr.)

A. At one time, yes.

Q. Was that in your office? A. Yes.

Q. What was said by Mr. Bergmann about the relative speed or value of the democratic processes?

A. How it came up, I don't remember; but it was to the effect that——

Mr. Dean: Excuse me, just a moment. Could we have the time of this particular conversation?

Mr. Jacobson: I don't think he knows.

The Witness: I can't tell you. It was last year there on one of his visits to me at the office; something to the effect about the German government, about the efficiency of getting things done, but he stated that he guessed, however, [354] that was the price we had to pay for democracy.

Q. By Mr. Jacobson: That is, it was——

A. That is in effect what he said.

Q. Did you ever discuss with him last year the question of the disposition of his property after his death? A. Yes.

Q. That took place during those same months?

A. Yes.

Q. Do you recall what he said he wanted done with him property? A. (Pause.)

Q. As you recall it, what did he say he wanted done with his property?

A. That is what he came to me about. The first thing he came to me about was seeing if he could get the condition there of the lumber on the street and the donkey engine corrected.

Q. That was corrected, wasn't it?

(Testimony of George W. Trammell, Jr.)

A. I beg your pardon?

Q. That was corrected eventually?

A. Yes, that was corrected; and he asked me to take that up with the harbor department, which I did.

Then I suggested to him why didn't he dispose of that property—I am speaking now with respect to the property there on West Seaside Boulevard —he said, "Well, what would you suggest?" [355]

I said, "Why don't you sell it to the city?"

He said, "I would like for them to have that for a museum or a park."

And I said, "Well, I don't think the city would want to have a park or a museum down there in the harbor department." I said, "Why don't you see if you can dispose of it to the harbor department."

And he said, "All right." He said, "When you talk to them, see if they would be interested in acquiring it."

Then I asked him upon what terms did he want to make an offer to the city, and he said he would think it over and would let me know.

Then he brought back—he had it all written out; I don't have it with me, but I do have it at the office—the terms upon which he would dispose of this property, and he agreed to dispose of it to the city.

Mr. Dean: Excuse me just a moment. I object to this if it is a recitation of what is in the docu-

(Testimony of George W. Trammell, Jr.)

ment on the ground it is not the best evidence and further it is immaterial.

Q. By Mr. Jacobson: To what document are you referring, Mr. Trammell; your own office notes or the contract or what?

A. No, no, not a contract. In other words, a memorandum that he gave me of the terms upon which he would dispose of it to the city. He gave it to me for my information.

Q. Let me interrupt at this point. No deal was ever consummated with the Harbor Department? [356]

A. No.

Q. But did the conversation then or later go into the question of how he would dispose of his property at his death?

A. Why, he said it there, if the city would purchase that property, if anything should happen to him that without any further payment the city should have that property. That was part of it. That if anything were to happen to him, then all payments were to stop and the city was to have that property without any further payment. I asked him at that time what effect that would have upon his relatives and he said they were all very well provided for and that he had willed half of his property to the Y.M.C.A. in Canada and half of it down here at the Y.M.C.A. in Long Beach. He told me that again at that time.

Q. You never saw Mr. Bergmann's will, of course, yourself? A. Oh, no.

(Testimony of George W. Trammell, Jr.)

Q. At least, you have never read it?

A. No. That is the only discussion, as I recall, I have ever had about that.

Q. Did you ever have a discussion or did the question ever come up in your conversations with him about his preference in the way of where to live and reside? A. Yes.

Q. Was that in one of these conversations?

A. Yes. [357]

Q. Will you state what he said?

A. I asked him what type of investment he thought was the best type of investment, and he said, "Real estate."

I said, "Where"?

He said he had made a very thorough study and that he felt not only was Southern California the best place to live but was also the best place to make an investment, and that of all of Southern California, he thought Long Beach was the best place, and he even went on down to a certain district there that he described in Long Beach as being the best place within which to make an investment.

He gave me the boundaries. As I recall it, it was something like this: Bounded on the west by Golden and on the north by Kent and on the east by Atlantic. He gave me the reasons why he felt that was the best place in which to invest in real estate.

I remember asking him, "Did he feel that that was better, Long Beach was better than, say, Los

(Testimony of George W. Trammell, Jr.)

Angeles," and he said yes, that he felt that his experience had been that that was a better place to invest his money.

Q. Did he express any preference as to where was the best place to live?

A. At that time he said he felt that not only was this place, that is, Southern California and Long Beach, the best place within which to make investments, but it was also the best place he knew of in the world in which to live. [358]

Q. In your conversations with Mr. Bergmann, were any subjects of national or international politics discussed, such as isolationism or interventionism?

A. I remember one time there was some discussion about that, and he brought me a little pamphlet. I don't remember what pamphlet it was. It was one of these reprints by one of the senators. I don't remember which one and I didn't read it.

Q. Well,——

A. It was on the question, as I remember, of intervention and non-intervention.

Q. Was there any discussion about the British Islands? A. Yes, sir.

Q. What was said about that?

A. I don't remember the exact words. In evidence of any antipathy of the ruling class, he spoke very highly of what he called the common people of England, but he did have an antipathy towards

(Testimony of George W. Trammell, Jr.)
the—I believe he called them the barons, the dukes and the ruling class.

Q. Did you ever talk about Germany with him?

A. Some.

Q. Will you state what was said by him in that connection?

A. As I recall, he stated that he felt a person had a much better chance over in this country where one could start over anew than they did over in Germany. [359]

Q. Did he talk about Hitler?

A. That one time there is the only time I heard him mention Hitler. I repeated that already. That is the only time I have ever heard him mention Hitler.

Q. That conversation you just repeated didn't have anything to say about Hitler. You just spoke of Germany. A. That is right.

Q. What I had in mind was, did you ever hear him discuss Hitler?

A. One time there something came up and he said something to the effect that Hitler did get things done but he guessed that after all maybe not getting things done so fast is one of the prices we had to pay for democracy.

Q. Was there any discussion of miltarism in any of these conversations? A. No.

Q. Referring to this third group of discussions you mentioned earlier in your testimony, that was after the suit was filed? A. Yes.

Mr. Jacobson: I think that is all, Mr. Dean.

(Testimony of George W. Trammell, Jr.)

The Court: All right, Mr. Dean.

Cross Examination

By Mr. Dean:

Q. Mr. Trammell, did Mr. Bergmann ever talk to you about his ethnological collection or archaeological collection [360] of specimens?

A. Yes, sir.

Q. Did he tell you he intended to leave that to any individual or municipality?

A. At the time he mentioned there that he would like for the city to have that property, he seemed to primarily want a museum or library there.

Q. What date was this?

A. That was last year. It is in one of those conversations I have with him the latter part of August and up through November there.

Q. You recall definitely he mentioned his collection in connection with the museum, do you?

A. As I recall, it was to the effect that he would like for the city to have something, or some collection of something. He would like for them to have a museum there and also about the plants. He had a lot of plants on this property that he would like for them to have those. He seemed primarily to be interested in a museum or library there on that property.

Q. Now, these pamphlets, or this pamphlet he showed you, do you recall, Mr. Trammell, whether or not it was a pamphlet written by Senator Nye?

(Testimony of George W. Trammell, Jr.)

A. I frankly don't know.

Q. Or Senator Wheeler?

A. I don't remember.

Q. Do you recall whether or not the America First [361] Committee has anything to do with it?

A. I frankly don't remember.

Q. You didn't read the pamphlet yourself?

A. Not that I recall.

Q. Do you recall distinctly that Mr. Bergmann said his relatives were all well provided for in Germany?

A. As I recall, when I asked him what about taking care of his relatives, he said they were taken care of.

Q. "Taken care of"? A. Yes.

Q. Did you ever hear him mention his father?

A. No, sir.

Q. Or any of his relatives in particular, specifically? A. No, sir.

Q. He used the plural term "relatives." Is that correct?

A. As I remember it, it was that.

Q. During the first group of conversations, Mr. Trammell, you stated that you were then City Attorney at Long Beach? A. Yes, sir.

Q. What time did you terminate your employment with the city?

A. I went out of office in July, 1939.

Q. Between the first and second group of conversations. Is that right? [362]

A. (Pause.)

(Testimony of George W. Trammell, Jr.)

Q. You classified these conversations in three groups. It was between the first and second group? A. Yes.

Q. Now, with reference to Mr. Bergmann's statement that Southern California was the best place to live, is that your best recollection of the way he put it? A. As I remember, yes.

Q. In other words, your fairly sure he didn't say "It is the best place for me to live"?

A: I didn't get that, no, sir.

Mr. Dean: That is all the cross examination.

Mr. Jacobson: May I ask a question I forgot, your Honor?

Redirect Examination

By Mr. Jacobson:

Q. Mr. Trammell, I meant to ask you when Mr. Bergmann came to see you after this action was filed, was there a discussion about what he should do with the holographic will he had prepared?

A. Yes.

Q. Well, did he have what purported to be a holographic will with him?

A. No, sir; I never saw a will.

Q. What was the conversation about what to do about it?

A. He asked me did I remember the conversations, our [363] previous conversations, and I said yes.

Q. Did he ask you what he should do about the will?

(Testimony of George W. Trammell, Jr.)

A. I think he did, and I said, "You should preserve that will."

Q. "To preserve it"? A. Yes, sir.

Mr. Jacobson: That is all.

Recross Examination

By Mr. Dean:

Q. Did Mr. Bergmann ever indicate to you that he wanted you at some time to draw a will for him, Mr. Trammell? A. No, sir.

Q. He never did? A. No, sir.

Mr. Dean: That is all.

The Witness: May I be excused?

The Court: Yes, you may be excused.

The Witness: Thank you.

(Witness excused.)

The Court: Call your next witness.

Mr. Jacobson: Mr. Henry Rohrs.

HENRY ROHRS

a witness called by and on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: Henry Rohrs. [364]

The Clerk: R-o-h-r-s?

The Witness: R-o-h-r-s, yes, sir.

(Testimony of Henry Rohrs.)

Direct Examination

By Mr. Jacobson:

Q. Where do you live, Mr. Rohrs?

A. 736 Walnut Avenue, Long Beach.

Q. What trade or occupation do you follow?

A. At the present time I am City Gardener of the City of Long Beach.

Q. How long have you lived in Long Beach?

A. Going on eighteen years.

Q. Are you a veteran of the First World War?

A. Yes, sir.

Q. During your residence in Long Beach you have had occasion to become acquainted with Mr. Bergmann, have you? A. Yes, sir.

Q. About when would you say it started; the acquaintance?

A. Why, back in 1928 I knew Mr. Bergmann. That was about the time I went to work down on the west side and Mr. Bergmann had property down there and used to come through the park quite often.

Q. Was Mr. Bergmann interested in plants and trees? A. Yes, quite interested.

Q. I suppose there were conversations about those things between you? A. Yes, sir. [365]

Q. Now, at one time you had a little home in Garden Grove, didn't you? A. Yes, sir.

Q. Did Mr. Bergmann ever come to your home there?

A. Yes, he came to our home. I think it was

(Testimony of Henry Rohrs.)

either 1937 or approximately '38. Anyway, it was during the winter that we had the cold snap, the real cold snap. I had a couple of palm trees there that I donated to Mr. Bergmann if he would dispose of them. He wanted them for his property over in Long Beach.

Q. When he came over there, was he there some length of time?

A. Yes, sir; he was there about—well, Saturday afternoon and then he came back on Sunday.

Q. On either one of these days did you and Mr. Bergmann find time to have any conversations other than about getting the trees dug up?

A. Oh, yes, we became quite personal. He brought his lunch over and we made coffee and he had lunch with us, with myself and wife; but our conversation roughly was on the outside when we were there at work. The conversation covered the political and foreign affairs. Being a World War veteran I mentioned about the foreign affairs, you know, and he was greatly opposed to——

Mr. Dean: Just a moment.

Mr. Jacobson: That is fine, Mr. Rohrs. [366]

Q. By Mr. Jacobson: Did this conversation run over a period of both days, or do you think it happened one Saturday or Sunday?

A. I think it was Saturday, Saturday afternoon.

Q. I believe you just stated that probably most of it was between you and Bergmann.

A. Yes, sir.

(Testimony of Henry Rohrs.)

Q. Your wife possibly might have been present? A. No, she was in the house.

Q. Now, in this conversation, I will direct your attention to the question of whether or not Mr. Bergmann made any statements regarding where he liked to live or did live; residence in other words?

A. Well, he liked Long Beach pretty well.

Mr. Dean: Just a moment. If this is a statement of Mr. Bergmann, I have no objection, your Honor. I just want to be sure.

The Court: I assume you are quoting him, aren't you?

The Witness: Yes. He mentioned he liked Long Beach.

The Court: He had been there long enough on that property?

The Witness: Yes, sir.

Q. By Mr. Jacobson: Did he express liking any other part of the world if he weren't living in Long Beach?

A. He liked the Islands. We mentioned the Philippine and Hawaiian Islands and, of course, it has been quite a while ago and I don't recall; but he liked the different Islands. [367] He thought they were very fine places.

Q. Did the subject of isolationism or interventionism come up? A. Yes, sir.

Q. What did Mr. Bergmann say about that subject; about how he felt about that?

(Testimony of Henry Rohrs.)

A. He didn't think we had any business to interfere with the foreign entanglements, to interfere with the other countries; that we should mind our own business.

Q. Did any question or discussion come up about his shell collection and archaeological collection?

A. Yes. I had asked him—being a single man I asked him what he intended to do with his collection and, of course, other things too that came up in the course of the conversation, and as near as I can remember it he said something about donating them to the Los Angeles Museum or some museum at some future date.

Q. Had you ever seen his collection?

A. No, sir.

Q. Was anything discussed that afternoon about Mr. Bergmann's views on inherited class titles and class distinctions?

A. Yes, that came up. In fact, I brought that subject up myself. I was over in France and England and we discussed about the nobility and the aristocracy and Mr. Bergmann had no use for nobility, the upper classes. [368]

Q. Wait a minute. Is that the conclusion you come to or did he say that?

A. No, he said that.

Q. Did he elaborate at all on the statement?

A. Yes.

Q. Well, give us all you can remember. I don't suppose you made any notes of what you discussed.

(Testimony of Henry Rohrs.)

A. No, I don't remember so much about it other than that he was opposed to it.

Mr. Dean: Just a moment. I object to this as being a conclusion of this witness.

Q. By Mr. Jacobson: Just what he said in substance. You don't have to quote his exact words, but give the substance of it.

A. He didn't have any use for the nobility, for the aristocratic or "royalty" as we discussed it there.

Q. Did anything come up about England or the English people?

A. Well, as near as I can remember, in the course of my discussion with Mr. Bergmann, or our talk, why, it was that the monied class, certain monied class, nobility, ruled England and was pretty much responsible for the world condition.

Q. Was there any talk about Germany, about Mr. Hitler—Germany or militarism?

A. Yes. I asked Mr. Bergmann what he intended to do [369] with all of his money or his collections, the things that he had—we got pretty personal there—and he said he was going to leave it to the Y.M.C.A.; that is, leave part of it to charity, the Y.M.C.A. and his collection, of course, he said to the museum.

He also said he had a mother over there, an elderly woman, and I asked him if he had ever been back there to Germany to see her and he said no.

I said, "Well, did you ever think of bringing her over here?"

(Testimony of Henry Rohrs.)

And then he said he couldn't go back to Germany to see her because he had left Germany to evade the military training and they probably would arrest him if he went back.

Q. Did he ever mention Mr. Hitler?

A. No, sir. I don't recall anything about Hitler. In fact, I know he didn't because I didn't know Mr. Hitler at the time of our conversation or anything about him. I wasn't reading much about him at that time. I didn't give it any thought.

Q. Do you remember with reference to whether or not Hitler—I mean to fix this conversation, had Hitler invaded any of those countries at that time?

A. No, sir.

Q. That hadn't happened yet? It was prior to that time? A. Yes. [370]

Mr. Jacobson: I think that is all.

Cross Examination

By Mr. Dean:

Q. Mr. Rohrs, you have related considerable conversation you had with Mr. Bergmann concerning the monied class in Europe—— A. Yes.

Q. ——and in England. A. Yes, sir.

Q. Did you have any conversation with Mr. Bergmann concerning the monied class in the United States?

A. No, not exactly the monied class. That is, we talked of our economic system here but——

Q. You have answered my question.

(Testimony of Henry Rohrs.)

Did Mr. Bergmann ever mention the name of President Roosevelt in connection with his discussion with you?

A. No, sir; I don't recall it.

Q. You recall rather distinctly, do you, that Mr. Bergmann said he was going to leave his collection to some county museum. It that right?

A. That is the understanding, yes.

Q. You have stated that you were interested in foreign affairs; that you discussed foreign affairs with Mr. Bergmann. Do you mean to say you never during that discussion mentioned the name of Adolph Hitler? A. No, sir. [371]

Q. You knew Mr. Bergmann was a German, of course?

A. I knew he was of German descent. I am too; born in this country, though.

Q. How long ago did you say this conversation took place?

A. Well, it was back in—I believe 1937 or '38. It was the year we had that real cold snap. I was living out on the ranch at that time.

Q. About five or six years ago?

A. Yes, sir.

Q. How long would you say the conversation took? About how much time did it consume?

A. Well, now, I wouldn't know. We were working there—he was working there and I was standing around watching him off and on. I wasn't with him all the time.

(Testimony of Henry Rohrs.)

Q. It might have taken place in 1936 but you couldn't say as to that?

A. No. It was the year we had the cold snap. It was prior to the cold snap. It was in the late summer or fall, somewhere around in there.

The Court: Well, which cold snap are you referring to?

The Witness: The one we had four or five years ago.

The Court: We have had several in the last ten or fifteen years.

The Witness: This is where it froze everything. It was probably four or five years ago. [372]

The Court: That was before that, wasn't it? That was in '34, the year after the earthquake, wasn't it?

The Witness: No, sir, it was four or five years ago that we had that real cold snap.

The Court: When was the earthquake? '32, wasn't it?

The Witness: March, '33.

The Court: The following year was the cold year, don't you remember? Some people tried to attribute it to the earthquake.

The Witness: Well, of course, I don't just remember the exact time.

The Court: I don't remember, either, but you are trying to recall a date. Cold is a relative term. Now, in South America they have a country where it hadn't rained for 30 years, but for one hour 30

(Testimony of Henry Rohrs.)

years ago it did rain and they call that the rainy year. Cold is also a relative term.

The Witness: All right; I will make it a little plainer then.

The Court: We want to find out the time.

The Witness: It was the year we had so much smudge over the country. That was the year it was so cold.

The Court: If you were out in Pomona, they would tell you they have it every year.

The Witness: Yes, but we had it down to 20 below and we don't have it that way every year.

The Court: I don't know. Perhaps I am wrong.

[373]

The Witness: It was probably five or six years ago. I just don't remember the exact date.

Q. By Mr. Dean: Do you read the newspapers pretty regularly? A. Some, yes.

Q. You say at the time of this conversation you hadn't read much about Adolph Hitler?

A. No, I don't recall that I did at this time.

Mr. Dean: I think that is all the cross examination.

The Court: All right, sir. You may be excused.

(Witness excused.)

The Court: Call your next witness.

Mr. Howser: Mr. Grant.

LOUIS N. GRANT

a witness called by and on behalf of the defendant, being first duly sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: Louis N. Grant.

Direct Examination

By Mr. Howser:

Q. Mr. Grant, what is your business or occupation?

A. Clerk in the Farmers and Merchants Trust Company at Long Beach, California.

Q. Where is that bank located?

A. At 3rd and Plain in Long Beach.

Q. How long have you been so occupied? [374]

A. Since October of 1925.

Q. Are you a married man? A. Yes.

Q. How long have you lived in Long Beach?

A. Since October, 1925.

Q. Are you acquainted with the defendant Mr. Bergmann? A. Yes, sir.

Q. How long have you known him?

A. Since June or July of 1932.

Q. Do you recall the circumstances of your meeting him?

A. Yes. At that time I was handling the foreclosures under deeds of trust for the Farmers and Merchants Trust Company and Mr. Bergmann came in to discuss the foreclosure of a deed of trust, I believe, covering some of this harbor property that he owns.

(Testimony of Louis N. Grant.)

Q. Did you transact business with him?

A. Yes. He left the papers and we prepared the notices and did foreclose that trust deed for him.

Q. Have you had occasion to foreclose more than one piece of property for him? A. Yes.

Q. Over what period of time?

A. Oh, I believe the next one was about a year later, or it might have been '34. It was between '32 and '34 that we transacted this business.

A. About how many years have you had dealings with him [375] in that respect?

A. Oh, I believe three years covers those foreclosures.

Q. During that period of time do you know where Mr. Bergmann resided?

A. Yes, I did. He invited me over to lunch one noon which he had prepared himself. I don't remember the address, but it was on West 6th Street, I believe, over in that area some place. He told me that that was where he lived. He had a small apartment.

Q. During these years of business with him do you know whether or not he took any trips to the South Sea Islands?

A. I know that he took trips and he told me, I think—the one I remember particularly was to Samoa.

Q. Do you recall approximately what time that was?

A. No, but I believe it was closer to '34 than '32. I couldn't remember.

(Testimony of Louis N. Grant.)

Q. You had a conversation with him at that time?

A. Yes.

Q. Where did that conversation take place?

A. Well, I had several conversations with him both in the office and at his apartment.

Q. During these conversations were there any other persons present?

A. At his apartment, no; but in the office, of course, our office force was always present.

Q. I mean people who participated or listened to the [376] conversation. A. No.

Q. Now, the last trip that you were just about to tell us, where did that conversation take place?

A. He commenced a foreclosure and told me he would be out of the country in Samoa when the time for posting the notice for the sale came up. He came into the office before it was time to post the notice, so I was surprised that he was back early.

Q. Did you have a conversation at that time?

A. Yes. I asked him why he came back so soon and he told me that he found his visa—I believe he said "visa"—was about to expire and that he wanted to get back in this country before that expired.

Q. Have you ever had occasion to discuss government with Mr. Bergmann?

A. No, we never discussed politics.

Q. Did you ever have occasion to discuss international affairs with Mr. Bergmann?

A. No, not from the standpoint of international affairs.

(Testimony of Louis N. Grant.)

The Court: Your relation with him was purely business, isn't that the idea?

The Witness: Except for the fact that this one day I went to lunch.

The Court: Well, that is all right.

The Witness: I was a little curious about a single man [377] with all the *month* that he apparently had, and which I know something about through my banking connections, living as he lived, so I questioned him about it.

The Court: I see.

Q. By Mr. Howser: Have you ever had occasion to see his exhibits?

A. Yes. At his invitation I went up one day to the Los Angeles Museum while he was, as he told me, setting them up or doing some work with them. The day I went up there he wasn't there, so I didn't go over them. I just knew where they were. That was all. I didn't examine them.

Q. Have you ever had occasion to converse with him as to the exhibits?

A. Only when he brought—one trip, I forget which one, when he came back from one of these expeditions and told me he had so much of this stuff that he had found in these caves in Samoa, I believe he said.

I asked him what he was going to do with all of it. He was a single man. And he said that some day he would give it to the—I don't remember whether he said the Los Angeles Museum or to whom, but he was going to leave it to some museum.

(Testimony of Louis N. Grant.)

Q. When was that, Mr. Grant?

A. That was in his apartment, the one time I went to lunch with him.

Q. In period of time, can you tell us when that was? [378]

A. Well, I believe that was nearer '32 than '34. I couldn't remember the date.

Q. Now, Mr. Grant, you say you have known Mr. Bergmann for approximately ten years?

A. Yes.

Q. Have you at any time during your conversations with him ever heard him criticize this government of ours?

Mr. Dean: Excuse me just a moment. I think the question has been asked and answered, your Honor. He said he had no conversation concerning politics or governmental or international affairs.

The Court: I will overrule the objection. This witness' testimony dates so far back and hasn't been brought down to date, I think the answer to the question, in view of the previous questions, doesn't mean very much one way or the other. He hasn't testified he talked to him any time subsequent to '34. That is nearly ten years ago. Germany was still a republic under the republican constitution.

Mr. Howser: Maybe I have misled the Court by my questioning of the witness.

Q. By Mr. Howser: Mr. Grant, have you had occasion to see Mr. Bergmann subsequent to the year 1934? A. Yes.

Q. Over what period of time?

(Testimony of Louis N. Grant.)

A. Well, from then on up until now occasionally.

Q. How often have you seen him? [379]

A. Oh, probably twice or three times a year.

Q. Do you recall when he obtained his citizenship?

A. I do not, but I recall him telling me one day that he was an American citizen when I met him in the Bank of America in Long Beach.

Q. Now, do you recall the approximate year that was?

A. No, except that it must have been more than four years ago.

Q. Do you recall the incident of Mr. Bergmann terminating his—I will put it this way: Did Mr. Bergmann ever terminate his business with your bank? A. Yes, he did.

Q. When?

A. I don't recall the date, but I do recall there was a misunderstanding and he severed all his connections with our bank and took his business, I presume, to 4th and Pine because that is the place where I saw him periodically thereafter.

Q. Do you know what year he took his business out of your bank?

A. I do not. I could determine that, but I don't know.

Q. Have you had occasion to discuss within the last four years—withdraw that, please.

Have you had occasion to converse with Mr. Bergmann on meeting him in the last four years? [380]

A. Yes, when I would meet him in the bank. Several times I made it a point to talk to him with

(Testimony of Louis N. Grant.)

the idea of getting him to return to our bank—return his business to our bank, but we never discussed that. We did discuss casual things, though.

The Court: Well, then, the upshoot of the whole thing is this: That in the last five years your discussions were mostly relating to personal affairs, some investments and the like, and that you never discussed politics or world affairs or anything.

The Witness: No.

The Court: Is that correct?

The Witness: That is correct.

The Court: All right.

Mr. Howser: That is all.

Mr. Dean: Just one question on cross examination, your Honor.

Cross Examination

By Mr. Dean:

Q. Mr. Grant, you are reasonably certain that about in 1932 or '33, Mr. Bergmann told you he planned to leave his collection to the Los Angeles County Museum?

A. I don't remember. I assumed it was the Los Angeles County Museum because he said he would leave it to a museum and, later, I think he did have it up there and was working up there setting it up.

[381]

Mr. Dean: That is all, your Honor.

The Court: All right.

(Witness excused.)

The Court: I think we will take a short recess before we call the next witness.

(A short recess was taken.)

The Court: All right, gentlemen, proceed.

Mr. Jacobson: Mrs. Mason, will you take the stand, please.

DOLORES MASON

a witness called by and on behalf of the Defendant, being first duly sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: Dolores Mason.

Direct Examination

By Mr. Jacobson:

Q. Mrs. Mason, you live in Long Beach?

A. Yes, sir.

Q. How long have you lived in Long Beach?

A. Since 1933.

Q. Is that before or after the earthquake?

A. After.

Q. That was in March, was it not?

A. Yes, sir.

Q. Have you had occasion to become acquainted with Mr. Bergmann while he lived in Long Beach? [382]

A. Yes sir; I was his neighbor for about four years.

Q. What years were they?

A. 1933 to 1937.

(Testimony of Dolores Mason.)

Q. Where did you live?

A. At that time I lived at 69 San Diego Avenue. It is right around the corner from Mr. Bergmann's Seaside Apartment.

Q. At that time what was your husband's name?

A. Stanley Mason.

Q. Stanley Mason? A. Yes, sir.

Q. Was he in the Navy? A. Yes, sir.

Q. Did you try to fix—strike that.

You have had conversations, I suppose, with Mr. Bergmann? A. Yes, several of them.

Q. I suppose it was on general things like his plants and shrubs? A. Yes, sir.

Q. That isn't what I am referring to now, Mrs. Mason. I have in mind the conversation relating to your husband being in the Navy. Can you fix that by year and month?

A. I can fix two of those conversations; one before my husband's death, which—well, it would have happened in about 1933 or 1934. Being in the Navy, my husband was gone a whole lot, and like a lot of young people I was resenting the fact. [383]

Q. Well, now, did you talk to Mr. Bergmann about that? A. Yes, sir.

Q. Just who was present? A. Pardon?

Q. Who was present and where did it happen?

A. Well, I went by Mr. Bergmann's property one day, and I was telling him I was lonesome.

Mr. Dean: Excuse me. I didn't catch that date, counsel. I am sorry.

Mr. Jacobson: 1933 or '34.

(Testimony of Dolores Mason.)

The Witness: It would be in the fall of '33 or the spring of '34.

Mr. Dean: Thank you very much.

The Witness: First, I had been admiring his flowers and was rather athletic myself and, for that reason, I had admired Mr. Bergmann because he was that type.

I was kind of blue that day, telling him I resented the fact my husband was away. He told me that wasn't the way to do things; that there was everything in this country. If I enjoyed flowers and things, to get down next to the earth, was his words; and there was everything in this country, if I would just go out and get it. He said that everything was mine and that that boy was away and if I wanted him proud of me that that was the thing to do.

He was so very proud——

Mr. Dean: Just a moment, please. I object to any [384] conclusion or opinion of the witness.

Q. By Mr. Jacobson: You started to say he was so very proud. Are you quoting Mr. Bergmann or are you giving an opinion?

A. I am quoting Mr. Bergmann.

I have been an American all my life, born here and I take these things for granted. Mr. Bergmann doesn't.

Q. What did he say about his American citizenship?

A. He told me that one thing he was proud of was that he could come here, he wasn't stopped, he

(Testimony of Dolores Mason.)

could do anything he wanted; that all the opportunity he wasnted was right there.

Q. Was that about all the conversation?

A. At that time, yes, sir. There were several conversations along about that time, but they were all very much the same way.

Q. Were you a bride then? A. Yes, I was.

Q. And your husband, what was he—on foreign duty, or something?

A. No. His ship had been sent around the east coast. At that time he was on the Chicago and had gone to the east coast for several months.

Q. Then you had the blues?

A. And I had to stay here.

Q. Well, you had at least this particular conversation? A. Yes. [385]

Q. Now, then, when was the next conversation you referred to a moment ago?

A. Well, I hadn't seen Mr. Bergmann from 1937 until the spring of this year. I had moved into another section of Long Beach, and I had traveled and one thing and another during that time. I came back to Long Beach and had occasion to visit some friends in the same district that Mr. Bergmann lived in. I was there several days. It wasn't just an hour visit. I was staying with them for several days. I happened to see Mr. Bergmann and I went up to him and asked him if he remembered me, and he did. I asked him if he remembered my husband. He said yes, and I told him that my husband's ship

(Testimony of Dolores Mason.)

had been torpedoed and he had been killed in the battle of Midway.

Mr. Bergmann, just for a minute, didn't say anything and he took me by both my arms, like this (indicating) and said—I was very much downhearted—"Don't be like that, little girl." He said, "Get your chin up." He said, "That man was fighting for you and if you want to make him proud of you, you get out here and get yourself a job and out of these dumps."

Now, those were his words to me.

Q. Was anything else said?

A. No, the rest of the conversation was just along that line.

Q. In any of your visits with Mr. Bergmann did you ever [386] hear him criticize our form of government?

Mr. Dean: Just a moment. I think that is a leading question, your Honor. I object to it on that ground.

The Court: She may answer.

The Witness: No.

Q. By Mr. Jacobson: Are there any other conversations with you had with Mr. Bergmann along the lines you have testified other than these two?

A. Well, yes, there was one conversation with Mr. Bergmann. It was in 1936. It would have been the spring of 1936.

Q. Where did it take place and who was there?

A. Mr. Bergmann was working on the Seaside

(Testimony of Dolores Mason.)

property, and I passed by, and, as usual, had stopped in a neighborly way, and talked to him.

In order to make you understand what I mean, I will have to explain something. That west side where we lived and where his property is—well, it could be compared to around the Plaza here. It is very much the slums of Long Beach. It is cheaper rents, and mostly Navy wives live there. I was telling him how nice his property looked, and what not. He said yes, he wished that he could make that a park or something so that people down in our end of town who couldn't afford some of the other things would have at least that much beauty. That is what he told me about his property at that time.

[387]

Q. Now, have you had any other conversations that you recall?

A. I have had several, but they have all been just about the same, along the same lines; nothing outstanding in any of them; just a neighborly good morning.

Mr. Jacobson: You may cross examine.

Mr. Dean: No cross examination.

Mr. Jacobson: May she be excused, your Honor?

The Court: Yes, she may be excused.

(Witness excused.)

The Court: Call your next witness.

Mr. Jacobson: Mr. Kammerer.

EDWIN KAMMERER

a witness called by and on behalf of the Defendant, being first duly sworn, was examined and testified as follows:

The Clerk: What is your name?

The Witness: Edwin Kammerer, K-a-m-m-e-r-e-r.

Direct Examination

By Mr. Howser:

Q. Mr. Kammerer, where do you reside?

A. 1121 Pacific, Long Beach.

Q. How long have you lived in Long Beach?

A. 23 years.

Q. Are you a married man? A. Yes, sir.

Q. With a family? [388] A. Five children.

Q. What is your business or occupation?

A. Real estate loans and insurance, and I am working at Cal-Ship on the swing shift.

Q. Do you know the defendant, Walter Bergmann? A. Yes, sir.

Q. How long have you known him?

A. About 18 or 19 years.

Q. Do you recall the circumstances under which you became acquainted with him?

A. Yes. I, at one time, far back in 1921, had a map made of that section where he lived over there, had signs up and built a good deal of that property on the west side. Mr. Jones of the Sash and Door Company—my sister worked for him—was buying lots down there and I made up this map on purpose and had signs on this lot and Mr. Hearst, the tax collector of Long Beach, sent Mr. Bergmann over

(Testimony of Edwin Kammerer.)

to see me. He said he had property down there too and said——

Q. Then you met him under circumstances of real estate dealings? A. Yes, sir.

Q. Now, have you had much contact with Mr. Bergmann during those 19 years?

A. Yes, considerable.

Q. What has been the nature of those contacts?

A. Both business and social. [389]

Q. What has been the nature of the business dealings?

A. Oh, he was looking up different properties he wanted to know about and the appraisement of them, what the value was, and what my opinion was.

Q. What was the nature of the social relationship?

A. Well, I went out different places with him.

Q. What do you mean by that?

A. Oh, come to Los Angeles and go to different places around.

Q. I am sorry, but I didn't hear that answer.

A. I say any place you would go socially. I wouldn't know the exact dates or anything like that.

Q. Well, do you recall going on Sunday drives with him? A. Yes.

Q. How many occasions would you say you had gone on Sunday drives?

A. Oh, I suppose it was considerable. It was lots of times.

Q. Approximately how many times would you say you have gone on Sunday drives?

(Testimony of Edwin Kammerer.)

A. In the 19 years—that's a long time.

Q. How many times would you say in the 19 years that you have been out on Sundays with him?

A. That would be pretty hard to give the exact amount. It would probably run—oh, that would be hard. It would [390] be just a guess with me. It would probably be fifty times, at least.

Q. Now, during those times did you have conversations with him?

A. Oh, we always talked about different things when we were out together.

Q. During that period of time were any other persons present during these trips?

A. No, we went together.

Q. Did you never have occasion to discuss with him the disposition of his property upon his death?

A. Well, he mentioned that he would leave it to the "Y" and the Salvation Army, different organizations; and I think there was a few private people he was going to leave some to, too.

Q. Have you ever had occasion during those conversations to discuss Germany? A. Germany?

Q. Yes.

A. Not to any great extent. I have heard him talk about it.

Q. Do you recall any talk about Germany?

A. Yes. He said he left Germany on account of getting away from the military.

Mr. Dean: Can we have the time?

Q. By Mr. Jacobson: Can you tell us the ap-

(Testimony of Edwin Kammerer.)

proximate [391] time when that conversation occurred, Mr. Kammerer?

A. I don't know as I could; the exact time.

Q. We can't tell you.

A. He made that statement more than once. I wouldn't know the exact time.

Q. Well, do you remember the year?

A. Well, probably 1936, 1923 when he first came here.

Q. That is, you have had occasion to discuss it with him more than once?

A. Yes, in casual conversation, yes, sir.

Q. Then you would say between the years 1923 and 1936 he had discussed the circumstances surrounding his leaving Germany? A. Yes.

Q. What did he say?

A. Just what I said before.

Q. Well, what was that, Mr. Kammerer?

A. He wanted to leave Germany and get away from military service.

Q. Did he tell you how old he was?

A. No, there was no age stated.

The Court: Did he tell you the year in which he left Germany?

The Witness: No, that wasn't brought up.

The Court: What's that?

The Witness: No, that wasn't brought up. [392]

The Court: All right.

Q. By Mr. Howser: Mr. Kammerer, do you recall—strike that.

A. He might have, but I don't remember.

(Testimony of Edwin Kammerer.)

Q. Have you ever had any conversation with Mr. Bergmann relative to filing his application for citizenship? A. Yes, sir, I have.

Q. Do you remember when that conversation occurred? A. In '36 or '37.

Q. Where did the conversation occur?

A. It was in Long Beach, up town. I met him at my office.

Q. Do you recall who was present?

A. Well, my stenographer was there.

Q. What is her name?

A. It was Virginia Sills.

Q. Is she still with you? A. No.

Q. What conversation occurred at that time?

A. Well, he mentioned that he was going to apply for his citizenship papers, and I told him that I thought it was a good thing for him to do.

The Court: It was a good idea. You were in favor of it?

The Witness: Yes.

The Court: All right.

Q. By Mr. Howser: Did you say anything? [393]

A. No. It was his own business, his own dealings.

Q. Do you recall any conversation with Mr. Bergmann after he obtained his last papers?

A. Yes.

Q. Do you recall the approximate time of that conversation? A. It was around '38.

Q. Pardon?

(Testimony of Edwin Kammerer.)

A. Either the last of '37 or the first part of 1938.

Q. That is to the best of your recollection?

A. Yes.

Q. Now, where did that conversation take place?

A. I met him downtown when I talked about that.

Q. Were there any other people with him or yourself? A. No, there wasn't at that time.

Q. What was said at that time?

A. He said he was proud that he had got his papers and proud to be a citizen of the United States.

Q. Anything further than that that you recall respecting the citizenship papers?

A. Well, he mentioned, naturally, that he would rather live here than any place he knew of; that it was a wonderful country to live in.

Q. Do you recall——

A. Everything was here.

Q. Pardon me. [394]

A. He talked about all the nice things there was in this country, and Long Beach, especially; quite a bit of conversation.

Q. What do you mean by "nice"?

A. Well——

Q. Or, excuse me, your Honor.

Did he say what he meant by "nice"?

A. Just a regular conversation; that it was a better place than any other place he had ever been. Freedom.

(Testimony of Edwin Kammerer.)

Q. Have you ever had occasion to discuss isolation or intervention by this country into the affairs of other countries with Mr. Bergmann? Answer that, please, yes or no, if you can. A. Yes.

Q. Do you recall whether you discussed that on more than one occasion?

A. On several occasions; several times.

Q. Do you recall the first conversation, the year? A. It has been so long ago.

Q. Do you not recall?

A. No, I don't recall.

Q. Do you recall the last conversation you had with him respecting isolationism?

A. I talked to him about it and wondered why——

Q. I can't hear you, Mr. Kammerer.

A. I say I also mentioned why he isolated himself like [395] he did.

The Court: We are not talking about that kind of isolation.

The Witness: Oh, you are talking about the country. I don't know what you are talking about.

The Court: I expect you, as a married man, to be a good union man and not allow scabbing on the job. That isn't what we are talking about. We are talking about isolationism in the sense of political policy.

The Witness: Politics?

The Court: Yes, foreign affairs.

The Witness: Foreign affairs?

The Court: You know what is meant by "isola-

(Testimony of Edwin Kammerer.)

tionism", don't you? You remember Senator Wheeler—we will use him as an example—Lindbergh, Mrs. Lindbergh, Congressman Fish, Congressman Knudsen?

The Witness: Norris and that bunch?

The Court: No, Norris wasn't an isolationist. Senator Lundeen whose speeches were written by Sylvester Viereck and these other people who were advocating isolationism. Let's see; Mr. Wood. I don't call him "General". He wasn't a real general. He was a merchant. Robert E. Wood, who ran Sears Roebuck & Co. He and a lot of others were advocating that we keep away from Europe or, at least, let England defeat them and, "it is not our fight," and "Stay here and let them come to us, and when they come here we will just fight them." [396] You know about all that.

Then the Japanese came here, you see—didn't come right here, but they came to Pearl Harbor. That is what they call isolationism, that kind of stuff, do you see? Have you ever talked to him about that?

The Witness: He talked about that first, yes.

The Court: I see. That is what he is talking about. Now, I will turn you back to your attorney. I just wanted to help you out.

The Witness: I appreciate that, your Honor.

The Court: All right, get back to the question. Go ahead.

Q. By Mr. Howser: Can you tell us what he said when you discussed that subject?

(Testimony of Edwin Kammerer.)

A. He said the way Wheeler and Lindbergh and them people were keeping us out of war, that that was o.k. Those are the lines we talked along, but, of course, after the war was over he changed his mind like every one else did—I mean after the war started.

Q. Did you have occasion to converse with Mr. Bergmann since December 7, 1941, the Pearl Harbor incident?

A. Sure. He has changed altogether.

Q. Just a minute. Do you recall how long after this incident occurred that you had such a conversation?

A. Well, I talked to him since the war, if that is what you mean, since the war started on December the 7th last [397] year. Is that what you mean?

Q. When, if you recall, did you have the first conversation with him?

A. About the first of the year.

Q. Where did the conversation take place?

A. That was uptown.

Q. Where uptown?

A. I met him on the street there and we talked about it.

Q. Were you alone? A. I was alone.

Q. Were there any people with him?

A. Nobody was with him.

Q. What was said by him and what did you say?

A. Well, he just says—just as the rest of us did—we will get rid of these dirty Japs. Now that

(Testimony of Edwin Kammerer.)

they are in the fight, we might as well make the best of it.

Q. You say there was some reference about the Japs? A. Yes.

Q. What did he say about them?

A. Oh, about the Japs jumping on us.

Q. Do you recall anything else about that conversation now other than what you have given us?

A. That has been quite a while ago. I couldn't give the exact words, but it was along those lines.

Q. Have you conversed with him since that time? [398] A. Yes, sir.

Q. On how many occasions?

A. Oh, probably fifteen, maybe fifty times since the 1st of January. Once a week, anyway.

Q. Mr. Kammerer, during the 19 years that you have known Mr. Bergmann, have you ever heard him criticize our form of government?

Mr. Dean: Just a moment. I object to that on the ground it is leading.

The Court: No, I will overrule the objection.

The Witness: No, I haven't.

Mr. Howser: That is all.

Cross Examination

By Mr. Dean:

Q. Mr. Kammerer, you say that you work at Cal-Ship. Is that right? A. Yes, sir.

Q. Did Mr. Bergmann approach you about testifying in this case? A. No, sir.

Q. Who was the first one who approached you?

A. Nobody approached me about this case.

(Testimony of Edwin Kammerer.)

The Court: Who talked to you about it? He didn't use "approach" in a critical sense.

Mr. Dean: No.

Q. By Mr. Dean: In other words, who first talked to [399] you about testifying in this case?

A. I saw it in the papers, and I thought——

Q. Just a moment. Don't tell us what you thought. A. O. K.

Q.. Do you want to answer my question now?

A. Yes; put it up again, please.

Mr. Dean: Read the question, please, Mr. Reporter.

(Question was read.)

The Witness: I don't know as though anybody did. I got a letter from Mr. Jacobson.

Q. By Mr. Dean: You say you received a letter from counsel. Is that right? A. Counsel.

Q. Did you ever talk with Mr. Bergman about testifying in this case? A. Yes, I did.

Q. When was the first time you talked with him?

A. I suppose it was probably August or September.

Mr. Jacobson: Your Honor, we can't hear the witness.

The Witness: August or September.

Q. By Mr. Dean: Isn't it a fact, Mr. Kammerer, that Mr. Bergman told you what he wanted you to testify to in this case? A. No, sir.

Q. He never told you what he wanted you to say in this court? [400] A. No, sir.

(Testimony of Edwin Kammerer.)

Q. Isn't it a fact that he promised you more money than you are making at Cal-Ship to appear as a witness in this case? A. No, sir.

Q. Now, Mr. Kammerer, you have been a business man in Long Beach for a long period of time, haven't you? A. Yes, sir.

Q. You say you have seen Mr. Bergmann countless times since 1921. Is that correct?

A. I think it was '23, wasn't it?

Q. 1923. I am sorry. A. Yes.

Q. Now, during the period from 1923 to 1937, did you ever discuss with Mr. Bergmann the advisability of his getting his citizenship papers?

A. No, I didn't.

Q. You never did? A. No, sir.

Q. Did you ever ask him whether he was a citizen of the United States? A. No, I didn't.

Q. You never asked him in that 14-year period whether or not he was a citizen?

A. No. I thought it was his private affair.

The Court: What did you say? I didn't hear that. [401]

The Witness: I thought it was his private affair. I never ask anybody about their business.

The Court: That is right. That is typical of an American man.

Q. By Mr. Dean: Now, subsequent to 1937, Mr. Kammerer, did you discuss with Mr. Bergmann how good it was from a business standpoint to have citizenship papers; how it would help a man in his business to have his final papers?

(Testimony of Edwin Kammerer.)

A. No, I didn't.

The Court: He said he didn't discuss it before.

Mr. Dean: I thought that was before 1937, your Honor.

The Court: At any time.

Mr. Dean: I think that is all the cross examination.

Mr. Howser: That is all, your Honor. Thank you.

(Witness excused.)

Mr. Jacobson: Is Edwin Kelly in the court room?

(No response.)

Mr. Jacobson: Could I get on the stand and read the Kingman deposition, your Honor? I think the other witnesses will be here at 2:00 o'clock.

The Court: I beg your pardon?

Mr. Jacobson: May I read the Kingman deposition at this time? I believe you said you wanted it read.

The Court: Yes, I want it read.

Mr. Jacobson: May I do that at this time?

The Court: Yes, go ahead. [402]

Mr. Jacobson: Do you want me to read from the copy or the original?

The Court: It doesn't matter, provided you have all the corrections. Are you sure you have them all?

Mr. Jacobson: No.

The Court: He has rewritten entire pages.

(Testimony of Edwin Kammerer.)

Mr. Jacobson: I have only the one that came from the notary.

The Court: No, I was in error. I said he had rewritten whole pages. That isn't true. There are some corrections, though.

Mr. Jacobson: I see a correction on page 2.

The Court: I was mistaken. I had in mind the statement of the defendant, you know, on which he made so many corrections.

There are very few corrections in the deposition.

Mr. Jacobson: You can use my copy, if you wish.

The Court: I don't want to follow it. I will just listen.

Mr. Jacobson: I presume, Mr. Dean, we may stipulate this deposition was taken pursuant to oral stipulation of counsel?

Mr. Dean: So stipulated.

Mr. Jacobson: And with the reservation of objections except, I believe, as to the form of the question?

Mr. Dean: No, that all objections are reserved. [403]

Mr. Jacobson: Except as to time, place and the manner of taking the deposition.

Mr. Dean: That is right.

Mr. Jacobson: (Reading)

"VICTOR C. KINGMAN

a witness produced by and on behalf of the Defendant, being first duly sworn, was examined and testified as follows:

The Notary: Will you please state your name?

A. Victor C. Kingman.

Mr. Howser: May we let the record indicate, Mr. Worthington, that I am appearing here on behalf of Walbfred Jacobson who is attorney for Mr. Bergmann. I am not officially attorney of record yet.

Mr. Worthington: You are of counsel temporarily.

Mr. Howser: That is right. And we have stipulated that this testimony of Mr. Kingman may be taken by way of deposition. That is Mr. Dean, Mr. Jacobson and I have so stipulated.

Mr. Worthington: What is Mr. Jacobsen's name?

Mr. Howser: Walhfred Jacobson. I will associate with him in the case.

Mr. Worthington: Yourself of counsel.

Mr. Howser: That is right, of counsel.

Mr. Worthington: The record should also indicate that all exceptions are reserved for the time of trial [404] except as to form.

Mr. Howser: That is right.

(Deposition of Victor C. Kingman.)

Direct Examination

By Mr. Howser:

Q. Mr. Kingman, where do you reside?

A. Jonathan Club.

Q. Is that here in Los Angeles?

A. Sixth and Figueroa, Los Angeles.

Q. How long have you resided there?

A. Three years.

Q. What is your business or occupation?

A. I am president of the Plomb Tools Contracting Company.

Q. And that organization is engaged in what kind of business?

A. Manufacturing tools for the Plomb Tool Company of which it is a wholely owned subsidiary for the Army Air Force.

Q. Now I understand that you expect to depart from the State of California on the 12th of this month? A. Yes.

Q. And you don't expect to return until what time? A. Sunday, the 29th.

Q. Mr. Kingman, how old are you?

A. Fifty-one.

Q. And where were you born? [405]

A. Helena, Montana.

Q. How long have you resided in California?

A. Since 1892 except for ten years absence in the East.

Q. And where were you in your ten years absence in the East?

(Deposition of Victor C. Kingman.)

A. Colorado, Missouri and Texas.

Q. What was the occasion for being in those states?

A. I went to Colorado College for four years and also worked there in Colorado for three years in addition to school work. Then I was with the Bemis Brothers Bag Company for the other three years in St. Louis and Houston.

Q. Did you have any particular training through college, or anything like that?

A. Engineering. I was superintendent of the Bag Company's plant in Houston, Texas.

Q. Now you say you were born in Helena, Montana? A. Yes.

Q. And what was your father's business or occupation?

A. He was a mining engineer.

Q. I believe you told me a little while ago that one of your relatives was judge in the District Court in Montana?

A. My grandfather was the first Supreme Court Judge, the first judge appointed by President Grand after the [406] Civil War for the Territory of Wyoming.

Q. How long have you known Mr. Bergmann? A. Since 1935, seven years.

Q. Do you recall the circumstances under which you became acquainted with him?

A. I was purchasing some property where oil was later discovered in the City of Long

(Deposition of Victor C. Kingman.)

Beach near where he lives and at that time I found that he owned some property which I bought from him as a result of our meeting.

Q. And what time was that?

A. About 1935.

Q. Did you have any firm association at that time? Were you with any particular company?

A. William Cavalier & Company, New York Stock Exchange.

Q. Now did you have occasion at that time to see Mr. Bergmann frequently?

A. Yes.

Q. And since meeting him in 1935 have you had occasion to see him?

A. Yes, a great many times.

Q. How often would you say you had seen him?

A. Well, it varied. When I was drilling oil wells in Wilmington and Long Beach I saw him weekly for quite some period. [407]

Q. During what period of time were you drilling? A. From 1936 to 1941.

Q. And under the name of what company?

A. The last three wells were the Anchor Company.

Q. What others?

A. Bond Petroleum Corporation which was located not far from where he lives. Three wells Lokern Developing Company.

Q. That is Los Angeles and Kern County?

(Deposition of Victor C. Kingman.)

A. Yes, there is a town up there named Lokern.

Q. Now you say when you were drilling these wells. Were you actually drilling the wells or did you have an organization?

A. I was president.

Q. How often would you say you have seen Mr. Bergmann in the last three or four years?

A. Probably a hundred times.

Q. And have you had occasion to have conversations with him?

A. Yes. We have visited back and forth and had more or less business during that time, since 1935.

Q. Do you have any knowledge of his archaeology trips that he made out of this country? A. Yes.

Q. You know as a matter of fact that he has had such archaeological collections in the Los Angeles [408] County Museum?

A. Yes.

Q. Have you had occasion to discuss with him those collections? A. Yes.

Q. Have you made any investigation outside of what he has told you concerning these collections?

A. I have talked with Dr. Bryan.

Q. And who was Dr. Bryan?

A. Dr. Bryan was head of the Museum at Exposition Park. And Dr. Comstock who was

(Deposition of Victor C. Kingman.)

curator of the Museum and who is a friend of mine.

Q. Do you remember what period of time that was when you talked to these men?

A. 1935, 1936 and 1937.

Q. I understand that Dr. Bryan is now deceased? A. Yes.

Q. Did you have an opportunity to see the collections of Mr. Bergmann? A. Yes.

Q. And what do they consist of, just generally?

A. Various works from the South Seas, South Pacific islands.

Q. To your knowledge when did Mr. Bergmann obtain these collections?

A. I beieve he was over there for about three years. [409] probably 1927, 1928 and 1929.

Q. You are not certain as to the dates?

A. Yes. I identify that as connected with his return to this country having been notified by the bank that defaults were taking place in some of the real estate he had sold, and part of that occurred in the 1929 crash.

Q. Did you ever have occasion to discuss with Mr. Bergmann what his disposition was going to be concerning these archaeological collections?

A. I believe he was going to leave them to the Museum.

(Deposition of Victor C. Kingman.)

Q. That is the Los Angeles County Museum? A. Yes.

Q. Where they were located? A. Yes.

Q. And did your conversations with Mr. Bryan bear that out? A. Yes.

Q. Did you ever have any conversation with him respecting his real property and what he would do with those on his death?

A. Yes.

Q. When was this conversation?

A. Oh, at various times over the past seven years.

Q. And as to his real property what conversation [410] did you have?

A. I understood that he was leaving property to the Salvation Army in Seattle and Long Beach.

Q. Did you ever have any conversation with him—— A. Also the Y.M.C.A.

Q. Did he say what particular Y.M.C.A.?

A. Well as I remember he said that they had befriended him in Seattle and also in Los Angeles.

Q. Now have you had occasion to engage in other business transactions with Mr. Bergmann other than you have given us?

A. Yes. While I was with the New York Stock Exchange firm I had business transactions with him involving his purchase of stocks and bonds.

(Deposition of Victor C. Kingman.)

Q. To what extent has he purchased, or did you engage in such business with him?

A. I think his business there amounted to probably a total well in excess of one hundred thousand dollars.

Q. Now did you have access to all the bonds that he bought, that is know the nature of them?

A. No. He always paid cash and took delivery.

Q. To your knowledge did he ever purchase any bonds of any German government or any German agency? A. No.

Q. The purchases and transactions that he had with you in what kind of concerns were they? [411]

A. Always the biggest and best of American industry.

Q. Now are you acquainted with whether or not he has any family, relatives?

A. Yes. I have never met any of them but on several occasions he has mentioned his father and mother and a brother who I understand is a surgeon of some note with the Mayo clinic.

Q. Have you had occasion to discuss with him social problems? A. Yes.

Q. And over what period of time?

A. Since 1935.

Q. And have you ever heard him make any statement disloyal as an American citizen or to this country? A. No.

(Deposition of Victor C. Kingman.)

Q. Have you ever seen any actions on his part that would indicate to you that he was engaged in any disloyal conduct? A. No.

Q. Has he ever to your knowledge belonged to any German Bund organization, or any similar organization?

A. No, not to my knowledge.

Q. Have you ever observed any German literature or newspapers in his home?

A. No.

Q. Or on his person? [412] A. No.

Q. How many times would you say you have had occasion to be in his private home?

A. Oh, I am sure more than a hundred times in the last seven years.

Q. Will you please describe the manner in which he lives?

A. More than just meagerly. He occupies one unit of the eight-unit bungalow court which he owns, the other seven units of which he does not rent. He appears to cook most of his own meals and lives in a very frugal manner.

Q. To your knowledge is he married?

A. No.

Q. Have you ever had occasion to discuss with him reasons for not being married?

A. Yes.

Q. Do you recall when that was?

A. At various times.

Q. Through the period of time in which you have known him? A. Yes.

(Deposition of Victor C. Kingman.)

Q. Do you recall just what was said by him?

A. Oh, I would say that it was his feeling that he was naturally very bashful. Probably living as modestly as he does he didn't care to undertake the expense of [413] keeping up a home and family.

Q. During the period of time that you have known him have you observed his concern over money? A. Yes.

Q. Can you describe that for us?

A. He seems to have a great desire to accumulate money, and worked very hard physically and mentally. I have noted dozens of his transactions.

Q. Well would you say that he is mentioned as a good spender, or thrifty, or miserly?

A He is very miserly?

Q. Now in this home of his did he have a rug on the floor?

A. No rugs, no radio, no automobile.

Q. Any furniture?

A. None to speak of.

Q. Have you observed the type of food that he eats, things of that nature?

A. Yes. He buys very frugally, cooks it himself and eats alone.

Q. Have you ever had occasion to discuss with him the late Senator Borah of Idaho, and Wheeler and Clark of Montana, or Lindberg, or Dewey? A. Yes, I would say so.

(Deposition of Victor C. Kingman.)

Q. Approximately how many times?

A. Several. [414]

Q. What was his statements concerning those men?

A. He admired their isolationist policy.

Q. Have you ever had occasion to discuss the European aristocracy that has existed during the centuries? A. Yes.

Q. What have been his statements concerning that?

A. Well he had a rabid hatred of it.

Q. Have you ever discussed militarism with him? A. Yes.

Q. What have been his statements concerning that?

A. He was very bitter against military power.

Q. Have you ever had occasion to discuss with him the reason for his coming to this country? A. Yes.

Q. When was that, the first time?

A. Probably about the first time I met him.

Q. Back in 1935? A. Yes.

Q. And where did the conversation take place, if you recall?

A. I don't recall.

Q. Do you remember who was present?

A. Probably no one.

Q. And what statements did he make at that time?

A. Well now, just regarding what?

(Deposition of Victor C. Kingman.)

Q. About the reasons for his coming to this [415] country and leaving Germany?

A. He came from a large family over there although I understand his father was well to do and prosperous. He struck out for himself when rather young with, as I remember, something like a hundred dollars and worked his way to Alaska to hunt for gold.

Q. You say Alaska, or Canada, or do you recall?

A. It may have been either one. He entered, I think, from Alaska and accompanied by an Indian spent a year or so up there rather isolated hunting gold.

Q. Do you recall what time he came into this country? A. No.

Q. The approximate year? A. No.

Q. Now prior to the war, I mean the World War No. 2, and prior to December 7th of last year, have you had occasion to discuss with him Adolph Hitler? A. Yes.

Q. And were these conversations all prior to Hitler's invading Poland? A. Yes.

Q. And what conversations did you have with him at that time respecting Hitler's capacity in Germany?

A. Well before the occupation of Poland he seemed to express admiration for Hitler's method by which he [416] had brought Germany out of its turmoil. He was definitely par-

(Deposition of Victor C. Kingman.)

tial to Hitler for the things that he had done in restoring order.

Q. And was there any mention about the Youth Movement in Germany?

A. Yes. Bergmann, himself, was quite a physical culture enthusiast.

Q. He still is as a matter of fact?

A. He still is. He was always preaching the advantage of clean living and exercise, the Youth Movement in Germany, and so on.

Q. And similarly expressed himself concerning liquor and the use of tobacco?

A. Yes, he totally abstained and has a great distaste for any one using it.

Q. Did you have occasion to discuss with him Hitler after the war started? A. No.

Q. You have had no conversation with him respecting Hitler's organization and his military machine?

A. No. Not particularly. I can't recall anything definite about it.

Q. Do you recall ever having any conversation with him about returning to Germany after the war, anything like that?

A. Yes. He wanted to visit his mother again. [417]

Q. Do you know how many years it has been since he had seen her?

A. Twenty-five or thirty years, I think from what he has told me.

(Deposition of Victor C. Kingman.)

Q. In all of your business transactions with him, Mr. Kingman, would you say Mr. Bergmann is the type of person that influences other people or is he one of the self-reliant individuals?''

Mr. Dean: Just a moment. I am going to object to that as calling for a conclusion.

The Court: I don't see the issue to which that is directed.

Mr. Jacobson: Well, the only possible explanation of why he lived alone so much.

The Court: I think that is the trouble with a lot of this testimony. It is directed to an immaterial issue. I even admitted he was thrifty. I admitted that he intended to leave his property to worthy causes, but that doesn't necessarily meet any issue in this case. The government isn't telling him he ought to get married or that he ought to rent his houses or that he ought to go around with more clothes than just his trunks, because anybody has the right to do that on his own property. I do it myself. I happen to live on a hill, not in Long Beach, but on a hillside in the Los Feliz district. I do that myself. That is how I keep healthy. I think a good deal of this relates to a [418] matter in which the government is not challenging at all. All of these men are brokers. Of course they were impressed with him. I happen to know this particular man. He lives at the Jonathan Club to which I belong. They, of course, are all impressed.

(Deposition of Victor C. Kingman.)

Success is a thing American men like. Even women use that as an excuse to marry a rich man. They like their quality; even apologize for it.

Mr. Howser: Your Honor, may I express myself on the reason for many of these questions?

The Court: Yes, surely.

Mr. Howser: It was for the purpose of the Court to consider the actions, declarations and conduct of the defendant as they might relate to the statements to be made by him. In other words, I can understand that people in certain walks of life might be influenced by my way of living or that the statements I would make would be influenced by my mode of living. And whether or not I would be a person, you might say with personality plus or an introvert, in my opinion would be of great assistance to the court in arriving at whether or not that particular individual was loyal or disloyal to the country.

The Court: I don't know. I happen to glance through this deposition and I noticed you are even going to ask Mr. Kingman whether he was an introvert or an extrovert, and I don't think introversion or extroversion has anything to do with loyalty to one's country one way or the other. [419]

This question whether he was self-reliant or not, is not material. As I said yesterday, it seems to me most of these witnesses who testified told us he is a hard-working, thrifty, even a miserly man. Now, how does that help us determine whether he made these statements which have been testified by

(Deposition of Victor C. Kingman.)

dozens of persons. Of course, the fact that he to others didn't express them is material, or to others he expressed loyal sentiments to the country is all right; but we are taking a lot of time. Like this man from the bank. After his testimony is summed up it amounts to nothing, except that he was a good account. He was sorry to lose him, and for four years every time he saw him in his bank he talked to him. Now, what does that have to do with the facts here?

Mr. Howser: I don't want to argue Mr. Grant's testimony, but we did believe his testimony to the effect that he had never heard a word of criticism is of value to the Court.

The Court: That is negative, it is true, and you have a right to consider it in a case of this character. No objection was made to that. But to talk about whether he is the type of man who influences others, or anything else, is immaterial. This is not a case where the man is charged with organizing groups or anything else. If the government had charged that he had organized groups to whom he was preaching certain ideas, I can see where that might be material; but there is no such charge in the complaint and no proof [420] directed to that charge.

Mr. Howser: I know the court will appreciate we were anticipating to expect anything when we came into this court room.

The Court: I realize that. I realize in a deposition you have to go far afield because you never

(Deposition of Victor C. Kingman.)

can tell what might be brought out and you want to be prepared.

Now, read that last question. Did you interpose an objection to that?

Mr. Dean: I did, your Honor.

The Court: What is the question there?

Mr. Jacobson: "Q. In all of your business transactions with him, Mr. Kingman, would you say Mr. Bergmann is the type of person that influences other people or is he one of the self-reliant individuals?"

The Court: Well, I will sustain the objection. I think it is on purely an immaterial issue.

Mr. Jacobson: (Reading).

"Mr. Worthing: Introvert?"

Mr. Howser: That is out.

The Court: Yes. Where was this taken?

Mr. Jacobson: In the United States Attorney's office.

The Court: I mean this deposition?

Mr. Jacobson: In Mr. Worthington's office, your Honor.

Mr. Dean: We provided quarters for the taking of this deposition, your Honor. [421]

The Court: I was wondering why—well, I will let *is* in there so long as somebody asked it.

Mr. Jacobson: Should I read the answer, then?

The Court: Yes, read the answer.

Mr. Jacobson: "A. He is unusually self-reliant and retiring; he doesn't mix at all or get along with people."

(Deposition of Victor C. Kingman.)

The Court: I see; all right. That really answered the question that we struck out, but we will let it stand.

Well, it is after 12:00 o'clock, gentlemen. I have a lot of work to do and we will continue the reading of the deposition until 2:00 o'clock.

We will not be delayed by the absence of any witnesses, will we, Mr. Jacobson?

Mr. Jacobson: No, your Honor. If they are not here we will put the defendant on.

The Court: I see. All right.

(Whereupon, at 12:10 o'clock P.M. a recess was taken until 2:00 o'clock P.M. on the same day.) [422]

Los Angeles, California,
November 19, 1942.
2:00 P.M.

Mr. Jacobson: Well, shall I continue with the deposition, your Honor?

The Court: Yes, let's finish it and not break the continuity.

Mr. Jacobson: Page 14, Line 22, I believe is next.

"Q. By Mr. Howser: Would you say that he is of average mentality, or is he very well educated?

A. I would say that he is not extremely well educated except that he reads a great deal and

(Deposition of Victor C. Kingman.)

seems to be up on world affairs and what is going on.

Q. Have you found in his selection of stock on the market that he is fairly well acquainted?

A. Yes. His record with us showed that he was not only astute and way above the average as our investors would go, but had an uncanny way about him. He was very studious about his securities before and after he bought them. Usually bought only of the very biggest and best investments.

Q. Have you had occasion to have any personal knowledge of any of the difficulties he has had with his neighbors down there in the Harbor?"

Mr. Dean: I am going to object to that as calling for a conclusion and hearsay.

The Court: It is a preliminary question. Overruled. [423]

Mr. Jacobson: (Reading).

"A. No, only what he has said himself about being criticised for living like a hermit. Well, I have heard other people accuse him of being a recluse, eccentric. He is quite a character around there.

Q. Have you had any occasion to discuss with him the matter of his becoming a citizen of this country?

A. Yes. He told me he had become a citizen sometime ago.

(Deposition of Victor C. Kingman.)

Q. Do you recall when that conversation took place? A. No.

Q. Has it been previous to this difficulty he is now in with the Government?

A. Oh, yes.

Q. Did you ever have any occasion to discuss with him his feelings, I might say, concerning becoming a citizen of this country?

A. Yes.

Q. How long ago was that?

A. At various times in the last seven years."

Mr. Dean: Just a moment. I am going to object to the answer because it is, apparently, a conclusion of the witness. It is not responsive to the question, either, and I am going to object on that ground, also.

It is only the second sentence I object to, your Honor. I withdraw the objection to the balance.

[424]

The Court: Well, of course, I don't know. The difficulty is the man expresses himself in that manner. He might mean he drew that inference from his conversation or through impressions. I think, however, in view of the question—the question is, "Did you ever have any occasion to discuss with him his feelings, I might say, concerning becoming a citizen of this country?

"A. Yes.

"Q. How long ago was that?

"A. At various times in the last seven years."

(Deposition of Victor C. Kingman.)

Well, of course, the difficulty on a deposition is that ordinarily you should have stopped there and propounded another question but for some reason or other it wasn't done.

Isn't this man available?

Mr. Jacobson: He had to go away on business, your Honor.

The Court: Oh, he had to go away on business?

Mr. Jacobson: Yes.

The Court: What follows is entirely germane to the inquiry.

Mr Dean: I object for this reason, your Honor. "He seemed to feel loyal."

The Court: "He seemed to feel loyal" he asked him, "Did you discuss his feelings," and then he said, "Yes, he seemed to be loyal." That his feelings were that way.

Mr. Dean: I withdraw the objection, your Honor. [425]

The Court: It is a border-line sentence. Go ahead and read the rest of it.

Mr. Jacobson: (Reading)

> "A. At various times in the last seven years. He seemed to feel loyal toward the United States; he had made his money here entirely and said that he was preparing to leave it all here. I think up to the time of the war he sent his mother a small amount of money monthly, but as I understood it other brothers had prospered also and he was therefore arranging to leave it to the Y.M.C.A. and the Salvation Army.

(Deposition of Victor C. Kingman.)

Q. He has a brother in Spokane, Washington? A. I don't know.

Q. Now you understand, Mr. Kingman, that the information and testimony you have given us is to be used in court? A. Yes.

Q. And is under oath to be the truth in this case? A. That is right.

Q. To be used in his behalf?

A. That is right.

Q. Have you told us all you know and can remember at this time concerning Mr. Bergmann and your relationship with him?"

Mr. Dean: Excuse me. Your Honor, I am going to make an objection to the answer to the next question on much the same [426] ground. I believe it is not in response to the question and also that it calls for a conclusion.

The Court: Well, I think that that is more of a defense of himself than contributing any facts. I will sustain the objection to that question.

Mr. Jacobson: (Reading)

"Mr. Howser: That is all for my part on this deposition.

Cross Examination

By Mr. Worthington:

Q. How many times, Mr. Kingman, in the past seven years, do you think you have had discussion on geopolitics with the defendant Bergmann?

A. Well I lived in Long Beach most of the

(Deposition of Victor C. Kingman.)

time for three or four years working there, and had occasion to see him on business and in the course of seeing him discussed things on dozens of occasions.

Q. And in the discussions as you stated concerning Hitler and his movements that the defendant alleged Hitler had made in Germany, did the defendant in your opinion show that he was in any way proud of his German descent?

A. Well, he never expressed himself on that that I can remember. He was proud of his family and their progress.

Q. From your association with him and what you know [427] of him and believe in general, would you say that he displayed an attitude that showed pride in Germany ancestry?

A. Yes.

Q. Now did you ever have occasion to go into any of the seven vacant units of this bungalow court where Bergmann lived in Long Beach?

A. No.

Q. Are you married, Mr. Kingman?

A. No.

Q. How many times would you say that you visited Bergmann's apartment during the period from 1935 to date?

A. Several dozen times.

Q. My understanding is correct, isn't it, that you haven't seen him since the war broke out only once or twice?

A. Just once.

(Deposition of Victor C. Kingman.)

Q. That would be subsequent to December 7, 1941?

A. Since then I have seen him, I think, just once.

Q. On any of these occasions were any other people present in the apartment?

A. No. I don't think at his place that I ever found any one there except people working on the roof or at his place. I don't think there ever was anyone present at our discussion either there or at the office of Wm. Cavalier & Company. [428]

Q. You have never seen Bergmann take a drink of any alcoholic beverage at all?

A. Yes, he occasionaly has a light wine there.

Q. Have you ever heard him discuss or declaim concerning women and their place in life, or his life?

A. Well he seemed to have no desire to have anything to do with women.

Q. You have heard him discuss it?

A. Yes.

Q. Have you ever seen any in his apartment? A. No.

Q. Does he have a telephone there?

A. No.

Q. Radio? A. No.

Q. You don't know what if any furnishings the other seven units had in this bungalow court, do you of your own knowledge?

(Deposition of Victor C. Kingman.)

A. No, not of my own knowledge. As I remember he said that the man that turned them over to him left them furnished. I can not be sure of that.

Q. What age man would you say Mr. Bergmann is? A. Forty-five or fifty.

Q. Did he ever state to you why he wanted to accumulate so much money?

A. No, except that I could see his craving and [429] mania for it, but he never expressed a reason.

Q. But he did give you to understand that he had no desire to take on any responsibilities in this country such as a family would entail?

A. Yes. I believe I can recollect that he said that he wished that he could find someone and have a family, but it was my opinion at the time that he was too much of a miser to spend the money, and the motive to accumulate money and live on next to nothing overruled his motive to have a family.

Q. When was the last time that you had business dealings with him in connection with land or oil?

A. An actual transaction in business you mean? 1940.

Q. Were you ever associated with him as a partner of anything of that kind, or joint venture?

A. No. I merely bought some real estate he owned and it was involved in lease with the Gen-

(Deposition of Victor C. Kingman.)

eral Petroleum Corporation who later drilled —community lease involving some one hundred and twenty acres which included this property, and some forty wells were drilled on the property. In the course of all of that, he living on the property and being in touch with everything going on. I would often times see him about the development of the oil there.

Q. Would you say from your knowledge and experience [430] with him that he could be termed a rather close mouth individual, or was he a man of excessive talk and braggadocio?

A. Well I would say that he was close mouthed and did not talk to people very much.

Q. Do you feel that you were in an exceptional class in that respect?

A. Yes. I was curious about his adventures in Alaska and the south seas and we used to talk at great length about his experiences. At one time he told me he was asked by the British Museum to conduct an exploration into Africa in search of such trophies as he had brought from the south seas.

Q. Would he discuss any geo-politics along the same line or to any such extent?

A. No.

Q. Prior to the attack on Pearl Harbor were you what might be considered an isolationist?

A. Not particularly, although I probably followed a conservative train of thought at that time.

(Deposition of Victor C. Kingman.)

Q. Would you consider the defendant Bergmann to have been capable of concealing if he so desired the fact that his loyalty was not to this country?

A. No, I don't think he is clever enough to conceal his feelings to anyone as well acquainted as we were.

Q. He never told you, did he, that he was opposed [431] to any policies of the Third Reich.

A. At the time that we were best acquainted Hitler was not in the military position that he assumed after he took Poland, so there was no basis for any particular discussions that way.

Q. Did he ever tell you that he was opposed to any of the policies of the Third Reich?

A. Well his discussions along that line were never extensive and as I recall he was—well to sum it all up against any armament or any war.

Q. You say he was against those?

A. Yes, he was rather rabid about it.

Q. Well we still haven't got an answer to my question. Did you ever hear him say that he was opposed to any of the policies of the Third Reich? A. Yes.

Q. Will you state, if you can, the occasion upon which he said that and what one or more policies that he was opposed to?

A. I can't remember the occasion. It was probably on more than one occasion in which he expressed a fear that a war might come and that he was dead against military powers.

(Deposition of Victor C. Kingman.)

Q. Did he ever made any statements subsequent to the time that the German armies took over Austria that he was opposed to war and feared that Germany would get [432] into war?

A. Yes.

Q. Did you ever have a discussion with him concerning the occupation of Austria by the German Army?

A. Not that I remember, no.

Q. Can you recall an occasion in which he expressed his fear of Germany getting into war after the occupation of Austria by the German army? A. No.

Q. Have you at any time heard him express disapprobation of Hitler since the occupation of Austria by the German army? A. No.

Q. Have you heard him at any time since the occupation of Austria by the Germany army express disapproval of any of the members of the Third Reich?

A. I have seen him so little since that time that I don't recall anything specific about any of the opinions that he expressed since that time.

Q. Now as a matter of fact, Mr. Kindman, all of your association with the defendant Bergmann has been that which was the result of business dealings?

A. No, I would say more than that. I took somewhat of an interest. There was a sort of

(Deposition of Victor C. Kingman.)

friendship between us, more than just an ordinary business acquaintance.

Q. Did you ever go out with him socially? [433]

A. No.

Q. Do you know who his friends were?

A. No.

Q. Did you ever visit with him or any of his friends?

A. No. We would have lunch downtown or dinner together occasionally somewhere, but that was about all.

Q. Now it is correct, is it not, that the testimony you have given here concerning various facts concerning the defendant Bergmann's family, and entry into this country, and leaving this country, are matters that have been told to you by the defendant Bergmann? You have no independent knowledge of them yourself?

A. No. I have no independent knowledge.

Q. Now that also includes the so-called disposition of the defendant Bergmann's property in case he should die? You have never seen his will, have you? A. No.

Mr. Worthington: Well that is all I have.

Redirect Examination

By Mr. Howser:

Q. Mr. Kingman, you told Mr. Worthington that you had no independent knowledge of the facts and circumstances concerning Mr. Berg-

(Deposition of Victor C. Kingman.)

mann. But you have had an opportunity to observe him yourself? A. Yes, I have.

Q. And has his conduct and actions been consistent [434] with what he has told you concerning his past history?

Mr. Dean: I am going to object to the balance of the answer as being a conclusion of the witness, your Honor, in addition as being rather vague.

Mr. Jacobson: Page 24, Line 19, your Honor.

The Court: Oh, I think the question is improper. It calls for a conclusion. I will sustain the objection to both the question and the answer on Page 24, Lines 17 to 23, inclusive.

You may ask the other question.

Mr. Jacobson: Reading from Line 24:

"Q. There was some question asked about him being braggadocio type, or some such description. Have you had occasion to have him address you in some German expression, or something like that? A. No.

Q. Like "Vegehts" or whatever it is?

A. No.

Q. Do you ever recall Mr. Bergmann discussing the subject of Hitler throwing the youth of Germany into war?

A. Yes. I would say, if you care to have me elaborate on that?

Q. Yes, go ahead.

A. I would say that in 1935 and 1936 he was quite an admirer of Hitler——" [435]

(Deposition of Victor C. Kingman.)

Mr. Dean: Excuse me just a moment. I am going to object, your Honor, to the answer—it is a lengthy answer—on the ground it is not responsive to the question and that it is also the opinion of the witness rather than a recitation of conversation.

The Court: Well, again, it is quite evident Mr. Kingman at the time this was taken was familiar with the lawsuit and also knew the answer that had been put in because some of this sounds just exactly like the answer, like some of the allegations in the answer. However, I can't say from the answer whether he is giving his conclusions from facts or not.

Mr. Dean: Well, may I qualify my objection just a bit, your Honor.

The Court: He says, "Do you ever recall Mr. Bergmann discussing the subject of Hitler throwing the youth of Germany into war?" And then if you skip the previous answer, "Yes, I would say, if you care to have me elaborate on that?" Then go ahead with, "I would say in 1935 and 1936 he was quite an admirer of Hitler and the youth movement and the progress economically that attended him in Germany." Now, the question was "discussions" and he evidently gives the summary of the discussion. I think it is colored with the knowledge he had of the defense, because that is exactly the defense made in the answer; although nobody as yet has testified to that except maybe one person, as drawing the line between Hitler's youth and admiration of what Hitler [436] did afterward.

(Deposition of Victor C. Kingman.)

Mr. Dean: With respect to the last sentence, doesn't that fall into another category?

The Court: Yes, of course, that will have to go out because that is merely a speech.

Mr. Dean: I will withdraw my objection to everything except the last sentence.

The Court: All right.

Mr. Howser: May I find out what is being deleted?

The Court: Oh, it begins "I honestly have——"

Mr. Howser: Thank you, your Honor.

The Court: All right.

Mr. Jacobson: I don't follow on that. You mean, "I would say that——"

The Court: Yes.

Mr. Jacobson: That entire answer?

The Court: No, right here; this one.

Mr. Jacobson: Then I may read the rest of the answer?

The Court: That is right.

Mr. Jacobson: (Reading)

> "A. I would say that in 1935 and 1936 he was quite an admirer of Hitler and the youth movement and the progress economically that attended him in Germany. He made no secret about that, and as time went on and the military progress of Hitler became well known it seemed to alarm him that the world might get into another war [437] and that all this physical culture and training and youth movement would lead to a lot of disaster.

(Deposition of Victor C. Kingman.)

Q. Have you had occasion to observe the pride of people as to their ancestory, whether they are Irish, or Scotch, or whatever they may be. A. Yes.

Q. Would you say that he had a greater pride in his German ancestry than an Irishman might have, or a Scotchman, or an Italian?

Mr. Dean: I object to that as immaterial and calls for a conclusion.

The Court: You can put it in. I will say this, gentlemen; I don't think a man saying, "I am proud of being a German" is anything at all. It is just like the story of the Irishman. If he weren't Irish, what would he be, and he said he would be ashamed of himself. So I don't think that means anything at all. Go ahead and read it. We all boast of something we treasure. Go ahead.

Mr. Jacobson: (Reading)

A. No. I would say that it was not above the average for a person who has come from a certain country and whose folks still live there. It wasn't at all boasting about his folks being German as Germans so much as that they were successful people and he was proud to have successful brothers and sisters.

Mr. Howser: That is all. [438]

Recross Examination

By Mr. Worthington:

Q. Did he ever express a desire to bring

(Deposition of Victor C. Kingman.)

his mother over to this country, have her live here?

A. I don't remember that he did. I think his father is still living, I may be wrong, but it was his mother he used to mention most. I don't remember that he did. I think he had brothers and sisters still in Germany and Europe, although he did have those who had been in other parts of the world and who had settled in America. It was my feeling that he thought his mother was well cared for by his other brothers and sisters. I can't remember specifically that he had planned on having his mother come over. He had planned on going back.

Mr. Worthington: That is all.

(Signed) VICTOR C. KINGMAN."

Then the last page is the certificate of the notary. Do you want me to read the whole thing?

The Court: No.

Mr. Dean: I will stipulate it is in order.

The Court: The signature was waived?

Mr. Jacobson: No, your Honor, it was signed.

The Court: He signed it and corrected it?

Mr. Jacobson: Yes. [439]

The Court: All right. You may just state for the record that there is a jurat attached by Blanche Crimp.

Mr. Dean: I am willing to stipulate it is in order, your Honor.

The Court: All right. The entire deposition will be received in evidence and marked as Defendant's Exhibit A.

(The document referred to was marked Defendant's Exhibit A, and received in evidence.)

Mr. Jacobson: Call Mr. King.

WILLIAM E. KING

called as a witness by and on behalf of the Defendant, being first duly sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: William E. King.

Direct Examination

By Mr. Jacobson:

Q. Where do you live, Mr. King?

A. 326 East 7th Street, Long Beach.

Q. How long have you lived in Long Beach?

A. 38 years.

Q. How long have you known the defendant Walter Bergmann?

A. As near as I can remember, eight to ten years.

Q. Do you remember the occasion of your becoming acquainted with him? A. Yes. [440]

Q. How did it come about?

A. Well, going through the harbor there by his place I became acquainted with him—on West Seaside Boulevard.

(Testmiony of William E. King)

Q. You mean you just walked by his place?

A. Yes. The whole front is between Mariposa and Santa Clara Avenue.

Q. That is his property? A. Yes.

Q. Have you continued your acquaintanceship down to date?

A. Well, about six years ago I purchased a seven unit court within fifty feet of the north line of his property and, of course, in between that time I would see him passing by there occasionally. He would generally be out working. He had some vacant lots—vacant property there and I would stop and talk to him.

Q. Your conversations, I suppose, mostly have been as neighbors or business acquaintances or what?

A. Some of them have been neighborly. I was interested very much in real estate and he was interested very much in real estate to buy for the future in Long Beach and we used to talk on that, you know, as to values, and one thing or another; and we used to talk about the neighborhood. [441]

Q. Did you ever have any conversation on political matters?

A. Well, about once. That is about all.

Q. About when was that?

A. About two years ago.

Q. Who was present and where did it take place?

A. Just Mr. Bergmann and myself on his prop-

(Testmiony of William E. King)

erty there, in the rear of his property, one afternoon.

Q. One afternoon?

A. I saw him out there working and I came in to talk to him. I don't know how it came about, but at that time there was quite a little controversy over isolationism.

Q. What did Mr. Bergmann say?

A. Well, he said that he was in favor of that. Of course, I can't give the exact words of that, but the substance was that he thought we should keep out of foreign entanglements.

Q. Did he say anything else?

A. Well, no, that is about all I remember on that subject.

Q. Was there any other political matter or international subject discussed in that conversation?

A. No, not that I remember.

Q. Then, as I understand it, the rest of the conversation was on what? Business matters?

A. Business matters and about the neighborhood there, [442] you know. Of course, he knew that I owned the property there and he was improving his property and I was interested in that, naturally.

Mr. Jacobson: I think that is all.

Mr. Dean: No cross examination.

The Court: All right, step down.

(Witness excused.)

The Court: Call your next witness.

Mr. Jacobson: Mr. Kellegher.

WILLIAM J. KELLEGHER

called as a witness by and on behalf of the Defendant, being first duly sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: William J. Kellegher, K-e-l-l-e-g-h-e-r.

Direct Examination

By Mr. Jacobson:

Q. Mr. Kellegher, you, of course, live in Long Beach? A. Yes, sir.

Q. And have for a long time?

A. Yes, sir.

Q. About how long?

A. Well, off and on for a great many years, but I have been a resident there now much of the time since 1924.

Q. You own an apartment called the Ralston Apartments? A. Yes, sir.

Q. That is located near Mr. Bergmann's west side [443] property? I mean West Seaside property? A. No, I would not say "near".

Q. How close to it?

A. Well, it must be a matter of fifteen, sixteen blocks.

Q. Did you have occasion to walk around in the vicinity of Mr. Bergmann's property?

A. Many times.

Q. When would you say you first met Mr. Bergmann?

A. I would say about 1923, '24.

(Testimony of William J. Kellegher.)

Q. What was the occasion of your meeting him?

A. Well, at that time I was at Long Beach planning to build my apartments. There was a boardwalk and I used to walk down the boardwalk just for pleasure and exercise and I always found this young man in the yard working. It just happened that as I came by I spoke for him for a few minutes and then went on. I spoke to him like that many, many times and we gradually became better acquainted.

Q. Is your acquaintanceship continuous to this day? A. Yes, sir.

Q. In the past few years you have travelled rather extensively, haven't you, Mr. Kellegher?

A. Yes.

Q. So in the past few years, you haven't seen him as much, I presume, as you did prior to that?

A. No, not so much. [444]

Q. Now, I want to ask you if you have had one or more conversations in the past with Mr. Bergmann in which the general subject of his citizenship or political affairs came up?

A. I never talked of political situations or conditions whatever, but one other things, yes.

Q. Will you mention some of the things you have discussed with him?

A. Well, we discussed about his stocks and about real estate and about his travels. I remember distinctly of his telling me—I would say this was some four or five years ago—that he was taking out or had made application for his citizenship papers

(Testimony of William J. Kellegher.)

and that he would be very happy to be a citizen of the United States.

Q. Well, that is the conversation I had in mind.

Going back a little bit, can you tell about when or where that happened?

A. Oh, it was just on one of those trips as I was going by, or I called to see him.

Q. What did he say?

A. He said that he had made application for his first papers and that he would be very happy to become a citizen of the United States.

Q. Did he give any reason why he would be happy?

A. Yes. He had so much property—he told me about how many lots he owned there in that vicinity at one time [445] and said he was going to buy more property. I believe he told me that he had some property in Wilmington leased to one of the railroad companies or to the Union Oil Company, some one of those corporatins, and that he was going to buy property, other property in the city which he has told me he has bought since.

Q. Did he ever express to you his feelings towards Long Beach? A. Yes.

Q. Was that in this conversation or in another conversation? A. What is that?

Q. Was it in that particular conversation about the citizenship papers?

A. No. Many times when I came by there and he held conversations, we would speak of the community. It didn't look so good to me as it did to

(Testimony of William J. Kellegher.)

Mr. Bergmann and I used to joke about it, but he would always say it was going to be a wonderful section of the city and he was very happy to have his property there. He thought it was going to be most wonderful. I did not think so.

Q. You have been an officer of the Apartment House Association in Long Beach for many years, have you not? A. Yes, sir.

Q. What years were you president?

A. I was president for five years. I would say from [446] probably '27 or '28.

Q. Were you president of the California State Apartment Association? A. Yes.

Q. When was that?

A. Well, between '28 and '32. I was president for two years.

Q. Of the State Association? A. Yes.

Mr. Jacobson: That is all. You may cross examine.

Cross Examination

By Mr. Dean:

Q. Mr. Kellegher, you stated that you talked to Mr. Bergmann about the time he was getting his first papers. Is that correct?

A. About that time or—whether he had made application at that time or not, I don't know, but he must have, of course, to have been able to talk about it.

Q. Did he use he term "first papers", do you recall?

(Testimony of William J. Kellegher.)

A. That he was making application to become a citizen of the United States.

Q. That must have been back in 1934, wasn't it, Mr. Kellegher?

A. I couldn't say the year, sir, but it was after he had made application. I never kept track of the years.

Q. I understand you didn't, but it could have been [447] 1934? A. It could.

Mr. Howser: I object to that as argumentative, your Honor.

The Court: He doesn't know.

Mr. Dean: Very well. That is all.

The Court: We will take judicial notice the first papers must be two years old before they can be followed by a certificate of naturalization.

Mr. Dean: Yes. That is all.

The Court: All right. However, they can be as old as seven years, too.

Mr. Dean: Yes.

The Court: All right, sir, you may step down.

(Witness excused.)

The Court: Call your next witness.

Mr. Jacobson: Is Mr. Corvette in the court room?

(No response.)

Mr. Jacobson: Could your Honor give me a couple of minutes to find him? Is it too early for the afternoon recess?

The Court: I don't usually take it until 3:30.

Mr. Jacobson: Well, I think he works for Cal-

Ship and it, apparently, is hard to find him. I thought he would be here by now. I would rather put him on next and then close with the defendant.

The Court: I see. Oh, he wouldn't be lost, would he? [448] Where would you find him in two minutes?

Mr. Jacobson: I thought he might be wondering around in some of the other court rooms.

The Court: Well, if you want a short recess, we will take a short recess.

Mr. Jacobson: Thank you, your Honor.

(A short recess was taken.)

The Court: All right.

Mr. Jacobson: Mr. Bergmann, take the stand.

FRIEDRICH WALTER BERGMANN

called as a witness in his own behalf, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jacobson:

Q. Where do you live, Mr. Bergmann?

A. I live at 421 East 6th Street, Long Beach.

Q. How long have you lived there?

A. I have lived there since the last two weeks.

Q. Before that, where did you live?

A. At 1255 West Seaside.

Q. Where were you born?

A. In Germany, in the State of Saxony at Walda on the 6th of March, 1893.

(Testimony of Friedrich Walter Bergmann.)

Q. What was your father's name?

A. My father's name was Theodore Edmund Nicolaus Bergmann. [449]

Q. What was your mother's name?

A. Flora Adele.

Q. Do you recall ever having seen your father?

A. I never have seen my father.

Q. So, when you were brought up in Germany, you were brought up by your mother?

A. Exactly.

Q. Do you know if your father is alive today?

A. So far as I can ascertain from the last letter from my mother, he is alive. That letter which I received from mother was around June or July of last year.

Q. She said he was alive?

A. Yes, to the best of her knowledge he was alive and resided at Meuhaldensleben where he was established in the steel and iron business.

Q. Of course, you haven't heard from your mother since that last letter?

A. I have not heard from my mother since the last remittance I made last July—pardon, correction, July, 1941.

Q. No, letters since your last remittance?

A. No, no letters whatsoever.

Q. How many children are there or were there in the family?

A. Altogether including myself four brothers.

Q. Name them, please.

(Testimony of Friedrich Walter Bergmann.)

A. That would be my oldest brother Kurt Bergmann, [450] Charles Bergmann and Edmund Bergmann.

Q. Where is Kurt now?

A. Kurt Bergmann was killed in the war—in the first war I better say—in 1915 or '16 in France.

Q. Was he with the German Army?

A. He was an officer in the German Army.

Q. Do you have any idea what rank he had, using the American ranks?

A. I would say either a major or a captain.

Q. He was killed where?

A. In St. Souples.

Q. How did you learn that?

A. One of the letters which I received from mother after I hadn't written my mother from 1920 up to 1930 stating that—it was in about the summer of 1930, I would say, when I got the first letter—that my brother was killed in the war.

Q. At St. Souples?

A. I beg your pardon?

Q. At St. Souples?

A. Yes. I also heard from my mother prior to this. That is, that would be—let me see.

Q. At any rate, you learned of your brother's death. Is that correct?

A. I would like to recollect the year.

Q. All right. I don't think it is important, Mr. [451] Bergmann.

A. Just a minute. I think I could recollect it,

(Testimony of Friedrich Walter Bergmann.)

sir, if it is important. I would like it in the books.

I do not recollect right now.

Q. But at any rate you learned from your mother—— A. Yes.

Q. ——that Kurt was killed in action?

A. Killed in France.

Q. Did any of the other brothers serve in the German Army? A. Yes, Edmund.

Q. Did he have any sort of rank or title?

A. He was also an officer, but not when he left Germany prior to 1911 with me because he only served in the capacity of an ordinary soldier at that time. That is, in compulsory service as an ordinary common private soldier.

Q. He returned to Germany when World War I broke out?

A. Yes, he returned to Germany from New York, I would say, about 1915, the latter part, or the beginning of the summer of 1916. He joined voluntarily the German Army while he was residing in New York.

Q. Do you know whether Charles went back?

A. Charles never went back. He never served in the German Army.

Q. Did you serve in the German Army in the first World War? [452]

A. I never have served in the German Army, I never will and never intended to.

Q. Where is Edmund now?

A. Edmund now resides at 61-34 220th Street, Bayside, Long Island.

(Testimony of Friedrich Walter Bergmann.)

Q. Do you know whether he is an American citizen or not?

A. He is an American citizen so far as I remember and had been since 1920 or 1922.

Q. Where does Charles live?

A. Charles is in Spokane, Washington.

Q. What does he do there?

A. He is the owner and manager of the Siberian Arctic Fur Manufacturing Company.

Both brothers have families. They are married and they have children. Brother Edmund has one son, I think, around eighteen years of age right now and my brother Charles in Spokane has two daughters. I would think they are around the ages of—it is hard for me to remember right now—I would think around fifteen and maybe twenty-five. Both are American citizens.

Q. Now, what schooling did you get in Germany?

A. In Germany I finished what you call here the Junior High and then a latter stage. That would be the superior highschool.

Q. What did they call it in Germany? What was the name. [453]

A. The Rehlschule.

Q. Did you finish the Rehlschule?

A. I did to the highest degree. That would be a degree or diploma in the senior highschool here.

Q. You completed the course of study, did you?

A. I did. What we have is ordinary general science, and ordinary knowledge of science, geometry, geology, arithmetic, mathematics, and in regard

(Testimony of Friedrich Walter Bergmann.)

to languages we only studied the vocabulary and grammar of English and French. It is not necessary to study Latin and Greek in the rehlschule in Germany.

Q. The rehlschule would be equal to what?

A. Highschool in the United States.

Q. After you left the rehlschule did you do any further studying?

A. After I left rehlschule I went to Plauen. That is in the State of Saxony where I was born, the southern part, from Dresden where Ihad been attending the rehlschule, and then for one year and a half I was employed as an apprentice in a big embroidery and lace concern for Arnold Von Schwarz. I worked in the capacity of office clerk, as beginner of bookkeeping and accounting work.

Q. Now, then, Mr. Bergmann,——

A. Pardon me.

Q. Go ahead.

A. This would be my practical training. However, my [454] mechanical training was received in night school where I studied commercial law, bookkeeping and accounting as well as salesmanship.

Q. About how old were you when you finished this night school and had this apprenticeship?

A. Well, I can state this to you: I was born in 1893. I finished at about the age of eighteen years, a little below eighteen. I would say seventeen years and six or seven or eight months.

Q. Now, did you attend any university in Germany?

(Testimony of Friedrich Walter Bergmann.)

A. I did not.

Q. You heard a witness testify here that you are a graduate of the University of Bremen?

A. That is not true. So far as I can recollect this day, in Germany they never have had a university at Bremen.

Q. Did you graduate from any university?

A. I did not. That is all the education I received in Germany.

Q. Did you ever tell Mr. Graham you were a graduate of a German university?

A. I never did tell Mr. Graham, the police patrolman. That is not true.

Q. When you finished this night school course and this apprenticeship you were about seventeen and a half years old?

A. Seventeen and a half—well, say seventeen years and about nine months, because I recollect very well that I [455] came back to Dresden to see my mother with my brother Edmund and we stayed about seven or eight weeks with mother because during that length of time the American Consul in Dresden had investigated our papers for entry into the United States. We applied a year prior to this and it took several months investigation because we had quotas at that time in Europe. I got a permit to depart for the United States when I was about seventeen years and ten or eleven months of age.

Q. Well, at any rate, did you come to some decision at that time as to whether you were going to stay in Germany of not?

(Testimony of Friedrich Walter Bergmann.)

A. Yes, I did, and I will tell you why. My mother was poor. As I said before I never remembered the face of my father because I was about four and a half or five years of age when my mother was divorced. My father left home. He associated with other women and my mother was compelled to have a small rooming house where I stayed with my other brother Edmund, who was my guardian later on, in order to make a living as the German courts allowed us so little.

My father was a sharp business man and he protected his money in such manner that there was no possibility for mother to get a proper share that she would get in an American court.

Q. At any rate, Mr. Bergmann, your mother kept roomers?

A. To make a living, yes. Brother Edmund paid my mother about eight marks which is equal to about twenty dollars a month, from his work which he received in another factory as [456] an office accountant in Plauen, which was the same time I had my apprenticeship and night school training.

Q. That is, after the boys got bigger?

A. Yes, of course.

Q. You decided to immigrate to America?

A. Exactly. I was under age, you see, and naturally I had to get permission first from mother.

Q. Did you get it?

A. The permission?

Q. Yes.

(Testimony of Friedrich Walter Bergmann.)

A. It is necessary under German law that you have permission.

Q. What did you do to get it?

A. You first have to get permission from mother that she is willing to have Edmund Bergmann, who was at that time about twenty-five years of age, be appointed my guardian. Otherwise I could not have left Germany because I was under age.

Q. Did your mother give permission?

A. She did.

Q. Did the German courts make Edmund Bergmann your guardian?

A. That is right. The German government had to give permission. If it is a young man under eighteen, he must guarantee in case of war time or not war time he has to serve his military year, but the German government is lenient enough [457] and gives a younger man sufficient time to go out for two or three or four years into the world and get practical experience, he carries that back in his mind to Germany where he then serves the balance of the service or stays in Germany or whatever he intends to do.

Q. At any rate, military service was looming up in your life?

A. Exactly. It was compulsory.

Q. And there was a guardian appointed and you went through the legal formalities to get a passport or permit to leave the country?

A. Exactly.

Q. When did you leave Germany?

A. I left Germany on February 11, 1911, on the

(Testimony of Friedrich Walter Bergmann.)

S. S. George Washington of the Hamburg-American line for the port of New York.

Q. What ship did you go on?

A. I said it a minute ago.

Q. The George Washington? A. Yes.

Q. From what town did you leave?

A. Bremerhaven, which is a little ways from the City of Bremen; like you have here in Los Angeles the port of Wilmington.

Q. I show you here something called an inspection card.

A. This is the inspection card. Shall I translate it [458] for you?

The Court: I can read German. Let me see it.

The Witness: I thank you for your courtesy.

(Passing document to the Court).

The Court: This is written in——

The Witness: This is an inspection card. I will tell you why I carry this card with me.

The Court: This is written in English anyway. It speaks for itself.

Mr. Jacobson: Yes.

The Witness: It has directions in several languages.

The Court: Yes.

Q. By Mr. Jacobson: Where did you get this card?

A. From the steamship company.

Q. And you have kept it ever since?

A. I have kept it ever since because—I will tell

(Testimony of Friedrich Walter Bergmann.)

you why—I can always show I am not a stowaway.

Q. It is pretty late to claim that.

The Court: Now, gentlemen, I think I will make a suggestion at the present time. I think we ought to do away with all these preliminaries because it is quite unnecessary except in the general way. No one is questioning the rightful entry of this man into the United States. His application shows his trip through Canada and other places and he is recognized as having entered the United States legally, so I don't think it has any meaning at all. I don't know what [459] importance it has. He is not charged with being a stowaway or anything of the kind.

We all carry little mementos with us. I will show you mine too. I came on the America and I have not only that, but I have a list of the passengers. We all keep little mementos like that, but what do they mean? They mean nothing in this case.

If we are going to follow this man from the time he came here, we will be here a week going over immaterial matters. I have no objection to him telling us his origin, when he came to this country; but to go into all these details and produce all these little slips which many foreign persons carry—they have to carry them for identification—just to prove he didn't come steerage or come as a stowaway, doesn't mean anything. I am merely suggesting we run over these. There is no charge here of illegal entry.

Mr. Jacobson: The thought wasn't that, your Honor. This is the type of case where the issue nar-

(Testimony of Friedrich Walter Bergmann.)

rows down to where a good deal is going to turn on what you think of the witness' credibility. Now, lots of things happened that he can't prove. He has to say them and hope you will believe them. Other things can be proved and supported by documents.

The Court: I don't see how the credibility of a witness can be determined in this or any other case by showing how good his memory is on other matters and by producing documentary evidence of immaterial issues. [460]

Mr. Jacobson: Well, I may be mistaken, but it was simply the thought——

The Court: There are certain ways of showing a man's credibility. You can't bolster it up when it is attacked, if it is attacked, by showing certain things as to which he has documentary proof.

Mr. Jacobson: Very well.

The Court: I have been very liberal in allowing testimony to go in because this is an equity proceeding. But I fear that with the tendency the witness has exhibited in his answers to you where he insists upon giving you a lot of information that you are not eliciting, why, we will have to confine the inquiry or otherwise we will be going over all sorts of things that are not material to the cause here.

Mr. Jacobson: Very well.

The Witness: I beg your pardon. Could I address the judge one second?

Mr. Jacobson: No, you can not.

The Witness: I see.

(Testimony of Friedrich Walter Bergmann.)

Q. By Mr. Jacobson: Can you tell us briefly where you went from Bremerhaven?

A. From Bremerhaven I went to Toronto, Canada.

Q. How long did you stay in Canada?

A. I stayed two years. I was chief bookkeeper and also accountant for Gruff Bredt & Company.

Q. I asked you how long you stayed in Canada.

[461]

A. Two years in Toronto from 1911 to 1913.

Q. Did you stay in Canada until a certain year?

A. Yes.

Q. What year?

A. I stayed in Canada, I would say, up to 19— my entry into the United States in 1922.

The Court: We have all this information in Government's Exhibit 1.

The Witness: Yes, you have.

The Court: July 13, 1922.

The Witness: '22, yes, that is correct.

The Court: This is your own handwriting, isn't it?

The Witness: Yes.

The Court: This appears in the statement given in conjunction with the filing of petition for naturalization.

The Witness: By Eastport, Idaho.

Q. By Mr. Jacobson: From the time you left New York and went to Toronto and came back to the United States by way of Eastport, Idaho, did you stay in Canada continuously?

(Testimony of Friedrich Walter Bergmann.)

A. I stayed in Canada continuously and during the war time——

Q. Were you registered with the authorities?

A. I was registered as an enemy alien during the years 1914 to 1917.

Q. At any rate you came to the United States after the first World War? [462]

A. Then I went to the United States via Idaho, the port of entry, in July, 1922, to Spokane, Washington, to my brother.

Q. You stayed there how long?

A. One year.

Q. Where did you go from there?

A. One week to San Francisco, then continued my trip about one week or ten days to Los Angeles, and afterwards to Los Angeles to Long Beach, and I have always made my residence there.

Q. When did you come to Long Beach?

A. The early part of 1923, March of 1923.

Q. And your residence has been there ever since. Is that right? A. Ever since.

Q. Now you have taken some exploration trips, have you?

A. I have made four little trips.

Q. Two to Hawaii?

A. I made two trips to Hawaii. The first one took about eight or nine months and the second one about eight or nine months. Then I continued afterward to French Oceania, the Society group of islands, and the first trip was about—well, I better make this clear. I went to Hawaii in 1931 and part of '32,

(Testimony of Friedrich Walter Bergmann.)

and the other trips, says, in '32 and '33 to Tahiti, French Oceania, returning again after eight or [463] nine months, and after staying here a couple of months I continued on to make a trip to the British Cook Islands for another five or six months, returning around '34 to the United States.

Q. Now, all of those trips—during all of those trips on these explorations you were not a citizen of the United States?

A. No, I was not a citizen of the United States.

Q. Did you get a permit to go on these trips?

A. I did. You see, I still was a German and I had to have a passport, naturally, for entry into—that is, for entry into places like the British Cook Islands, I had to show my proper passport and visa.

Q. Do you still have those passports?

A. I gave to the agent of the United States Immigration and Naturalization Department the second passport. The first one from Germany I still have in my possession.

Q. When you left Germany in 1911?

A. When I left in 1911, left Germany, yes. That shows my entry into the United States via Idaho. That passport I still have in my possession, the second one issued by——

Q. Just a minute. You understand the government is not contesting or claiming that you entered the United States illegally.

A. All right, I am glad.

Q. Outside of those four trips, did you make

(Testimony of Friedrich Walter Bergmann.)

another [464] short trip out of the country during those years?

A. I did, just for about five or six days altogether. On July 1st and July 2nd—that was in 1929—I made a trip with a family of well known ranchers from Hemet, California, by the name of Ernest Lindquist, including a son and daughter, to Tijuana. That was about July 1st or 2nd of '29.

Q. You heard a witness testify that you said that no American girl was fit to be your wife or the wife of a German. Did you hear that testified in this court?

A. Yes, I heard it.

Q. Is that true?

A. I say to you it is absolutely a lie.

Q. Have you asked any American girl to be your wife? A. I have asked twice.

Q. And both times you were unsuccessful?

A. One girl in Hemet, the daughter of the same family I just mentioned, and another lady who was here as a witness.

Q. Mrs. Starks? A. Yes.

Q. When did you determine to take out your citizenship papers?

A. Pardon me. I want to mention the girl's first name. It was Edith Lindquist.

Q. Now, then, you decided at one time to become a citizen of the United States? A. I did. [465]

Q. Do you recall about when you first came to that decision?

A. Yes, I can tell you. The decision I made is

(Testimony of Friedrich Walter Bergmann.)

right after I came back from may last trip to the South Sea Islands.

First I came here to Spokane, Washington, with the intentions of becoming an American citizen. Naturally, I tried to do this before in Canada, but that was early in 1920. The reason——

Q. Just a minute. A. Yes.

Q. Let's get back to Spokane. A. All right.

Q. When you went to Spokane what did you say your intentions were?

A. To become an American citizen like my brother Charles Bergmann and Edmund Bergmann. They have been naturalized citizens for a long time.

Q. Then you didn't stay in Spokane?

A. No. I intended to start in business with my brother to whom I loaned a sum of money in order to build his home, a residence on an acreage outside of Spokane where he resided, which building was under construction at that time. I really intended to stay with him and join him in the business, but all my life I have been very independent. I had my own business connections and I felt like a captive bird, you might say, being with my brother and associated with him in [466] business. I realized that I preferred to make my own living.

Q. Be yourself, in other words?

A. So we departed in the most friendly spirit around about January of 1923, I would say.

Q. Well, then you came south?

A. Then I came south, that's it, via San Fran-

(Testimony of Friedrich Walter Bergmann.)

cisco, Los Angeles to Long Beach—about February or March to Long Beach.

Q. Then you stayed here and eventually decided to file your application for citizenship?

A. Prior to this—I want to point out to you —I made very careful observations and, naturally, like any one else who comes from a foreign country, you first have to get accustomed to foreign ways. I came from a country that is nothing but obedience, everything is crowded and it was hard to earn a living, like I said for my brother Ermund, and when I realized—when I saw the open spaces of Canada, especially Western Canada, I realized only then that I preferred the outdoor life more than anything else. From my school days I remembered especially vacation time I was a great believer in joining mountain clubs, and after being inside a business office in Toronto, Canada, for two years I felt the call of the wide open spaces. I felt the life of a rancher would be more interesting to me or the life of a prospector, and that is when I realized, when I stayed in Spokane, Washington, I wouldn't like that business, the fur business because you were [467] always inside.

When I came to Long Beach I realized then that maybe I could start an outside work which would keep me out in the open. That is, I did not have any experience in regard to agricultural methods, but by fate or circumstances when I stayed at the Y.M.-C.A. I walked one Sunday morning down along the beach. At that time the water was very low in the

(Testimony of Friedrich Walter Bergmann.)

Los Angeles river bed and I was able to walk across there. I noticed along that beach front there several signs, real estate for sale signs. At that time that property did not have a street, a paved street. It was just designated on the blue print as Seaside Boulevard.

Q. It was just open country? A. Yes.

Q. Back in '23 and '24?

A. I had never bought land in my life and I noticed one lot was to be for sale by the owner. She had the price marked way down. When I walked back the same Sunday morning before dinner I realized on this side of that Los Angeles River bed—because this in the Long Beach Harbor district—they were about the same size of that one I mentioned briefly where the lady had marked the price way down, but over ten times the price. Instead of being a thousand dollars they were ten thousand dollars. I couldn't see the reason.

Q. Wait a minute, Mr. Bergmann. Was it open land there that you were interested in? [468]

A. Yes.

Q. Did you end up by buying some vacant land? A. Exactly.

Q. And you have been doing that ever since?

A. I have done this ever since, yes, up to this day.

Q. And you have improved it?

A. Yes.

I swam out into the ocean and—I think you have all this information from the different witnesses—

(Testimony of Friedrich Walter Bergmann.)

I filled in my land with dirt that I got from excavation places. I planted shrubs and trees afterwards to beautify the surface, and I think I have been a very civic minded citizen, without boasting, because many times I have heard it from others.

Q. Well, at any rate——

A. That is, in that neighborhood especially. I am talking about outstanding improvements of the real estate.

Q. Do you remember about when you decided to take legal steps to become a citizen of the United States?

A. Yes. I realized after I left my brother that I liked very much these surroundings, especially of Long Beach. It was so different from Spokane where I only remained about ten or twelve months. Here we didn't have the four seasons. In Spokane we had the four seasons of the year, spring, summer, autumn and winter. Here we have sunshine all the time. We did have two or three months of fog but nothing disagreeable enough to say it was discomfortable. I realized I liked Long [469] Beach. Naturally, after you have stayed there continuously and succeeded in your hard work including working on Sundays—I am ashamed to state in this court I have been working the full seven days and taking only a half a day now and then but that was only for downtown business appointments. I have continuously worked that way as I described previously.

Q. Now, at any rate——

(Testimony of Friedrich Walter Bergmann.)

A. I like the people there and the climate. I will talk about the climate first. The freedom of action in regards to assembly, in regards to conversation and in regards to relationships, any way you might refer to it, be it social, be it commercial or otherwise, I like it and that is why I put my whole heart into it. But nevertheless I worked so hard that I wanted to get away from all work for a certain length of time in order to see some other people, not only white people whom I have seen all my life, but I had heard about the yellow people, the brown people. So I wanted to go to a place where different people are living, not only people but trees and birds and that is the reason why I made my trips.

Q. And then you came back from them and——

A. I came back after I made my trips, but they were not strictly pleasure. They were also, you might say, by fate or circumstances, of a scientific nature.

Q. You did get a lot of shells?

A. I said by fate or circumstances I call myself an amateur archaeologist. [470]

Q. I think the Court knows about your collection already, but you made two types of collections. as I understand it.

A. I have a shell collection which is a minor part. It is about five per cent of the total.

Q. Who has that?

A. That is still on display for the public's benefit in the 6th Agricultural District at the State Ex-

(Testimony of Friedrich Walter Bergmann.)

position Park in Los Angeles and has been for the last eight years.

Q. Now, these ethnological specimens are where?

A. The specimens or pre-historic times have been continuously, until last year, early in April, stored with the Los Angeles Museum since 1932.

Q. Now, did you take them away at your own request?

A. I did not. I received a letter from Dr. Woodward and that letter, I think, I have given you for an exhibit.

Q. The substance of it is that they didn't have any room?

A. They did not have the space. They wanted to put some other collection in there, and asked me —they said, "Bergmann, please get these collections removed as soon as possible. Sooner or later we might request a part of them again."

Q. Did Mr. Williams and Mr. Shields help to bring these specimens back?

A. Exactly. Mr. Shields was a truck driver, as I [471] understand it, but I did not know Mr. Williams before.

Q. They helped you anyway? A. Yes, sir.

Q. You heard them testify in court here, I believe, yesterday? A. Yes.

Q. That you gave them the "Heil, Hitler" salute?

A. I did not give the "Heil, Hitler" salute. That is untrue.

(Testimony of Friedrich Walter Bergmann.)

Q. What did you do?

A. When they went away, I said, "Well, boys, so long." I never used the words "Heil Hitler." I know I raised my hand and said, "Well, boys, so long." I am positively sure. I never talked to these men before in my life. I had even never met them during all my social acquaintanceship in the museum. When I came back from my trips I worked as much as three weeks in the museum. I even slept in the museum, but I never met these two men.

Q. Now, try to answer my questions a little bit more briefly, Mr. Bergmann. A. O.K.

Q. Do you remember filing a statement of facts with the Department of Immigration and Naturalization? A. Yes, I do.

Q. It is in evidence as Government's Exhibit No. 1. A. Yes. [472]

Q. Now, directing your attention to Question No. 26, "if necessary, are you willing to take up arms in defense of this country?" What did you write following that question?

A. In the affirmative I wrote down "yes."

Q. Now, I notice there is a sort of a weakly black line under the word "defense." Do you know who put that there? A. I did.

Q. Now, below the word "yes" there is also——

A. The same kind of a line, a wavy line.

Q. Did you do that? A. I did.

Q. Why did you do that, if you remember?

(Testimony of Friedrich Walter Bergmann.)

A. I can point this out to you. That is, I mean this is very important because I am not a conscientious objector. You will see these wavy lines actually corresponding with these lines up here.

The average American might make a straight line this way. I do not use a straight line with my hand, but I do it in wave form.

Q. What you want to tell the Court then is this: When you put a wiggly line under a word you mean to give it added emphasis. Is that right? A. Exactly.

Q. Now, Mr. Bergmann, after you had written that answer "yes" and put those lines beneath it, I want you to give me as close as you can, as accurately as possible what [473] conversation took place between you and the representative of the United States Department of Immigration. Do you remember who it was?

A. Yes, I remember. I think it was this gentleman who is sitting down in front of Mr. Dean.

Q. Mr. Barber?

A. I can not recollect the name, but I remember the facial features.

Q. Was anybody else present besides yourself and Mr. Barber?

A. There was another person, I think to whom Mr. Barber talked after I signed the statement. I think I was sitting there for about ten or fifteen minutes alone, and I think Mr. Barber returned then afterwards alone.

(Testimony of Friedrich Walter Bergmann.)

Q. Now, then, Mr. Barber took this application, I presume, in his hand. A. Yes.

Q. All right. Now, I am directing your attention to this question, not all of the examination he gave you, but particularly to this question.

A. Yes, No. 26. Is that it?

Q. Yes. Now, what conversation did you and Mr. Barber have?

A. I marked down "Yes" and Mr. Barber asked me this question: "To the best of your recollection, Mr. Bergmann, that means in case there is a war against Germany you will [474] bear arms for the United States?"

Q. What did you say?

A. I said to him, "Yes."

Q. What did he say?

A. He said, "Well, that is the question I wanted to ask you. I understood first that you maybe did not want to bear arms for the United States in case the United States has a war with Germany."

Q. What did you say to that?

A. So far as I remember, he understood this from the other man he was talking to because this other man who he was talking to, he talked to me first and asked me certain questions.

Q. All right. Now, Mr. Bergmann, at the time you signed that petition and asked this court to grant you citizenship, would you bear arms against the Third Reich or the Kaiser's country or Ger-

(Testimony of Friedrich Walter Bergmann.)

many, whatever country it is by that name, in defense of this country?

A. I certainly would. I made up my mind right at that time that I will bear arms for the United States and fight against Germany even if I had to fight on German soil for this country here, my country, the United States.

Q. Have you felt that ever since?

A. Always.

Q. Do you feel that way now?

A. I do. [475]

Q. Do you remember being sworn in as a citizen? A. I beg your pardon?

Q. Do you remember being sworn in as a citizen? A. Yes.

Q. Do you remember who gave you the oath?

A. I think it was the pleasure of the gentleman who sits right beside me, Judge Yankwich.

Q. Do you remember the oath being read to you and explained?

A. Yes. There were many people in that room and we all listened to the words.

Q. Did you understand the oath? Understand what it was?

A. Every word. I have read it before many, many times. I also read many times the farewell address of George Washington which has always interested me.

Q. Mr. Bergmann, do you remember having the court read this oath that you would be required to take?

(Testimony of Friedrich Walter Bergmann.)

The Court: The clerk reads it, Mr. Jacobson.

Mr. Jacobson: The clerk reads it, not the court?

The Court: That is right.

Mr. Jacobson: Thank you, your Honor.

Q. By Mr. Jacobson: Now, listen very carefully, Mr. Bergmann.

> "I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity [476] to any foreign prince, potentate, state, or sovereignty, and particularly to Germany of which I have heretofore been a subject; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely without any reservation or purpose of evasion, so help me God."

Did you take that oath?

A. I have taken that oath without any reservation whatsoever.

Q. Do you still mean it?

A. I still mean it.

Q. The reply you made on here in writing was——

A. An affirmative yes, but the wavy line should not be construed as a straight line.

Q. "Yes, with greatest sincerity." Is that your writing?

A. Yes, that is my writing.

(Testimony of Friedrich Walter Bergmann.)

Mr. Dean, I must point this out to you.

Q. Do you remember Mrs. Louise Pelliter taking the stand in this Court?

A. Yes, I do. I remember the lady.

Q. Do you remember her saying that you advised her against buying United States bonds, stating that they were not safe? [477]

A. I never have said "U. S. Bonds". This lady wanted to know what best interest she could get. She told me once she had invested quite a bit in a building and loan association and she got six per cent interest and was disappointed. If I remember right it was the Pacific State Savings and Loan Company.

I said, "Lady, if you are looking for security, don't look on a percentage basis; look for the preservation of your capital. Therefore, you will find it is much better to be satisfied with two and a half per cent or three per cent and buy some good bonds. That is, if you want to buy good bonds, buy No. 1 U. S. Bonds, but you can't expect a very high percentage from them.

"If you want to get good interest on your bonds, buy industrial bonds where you will get four, four and a half or five per cent."

She was interested in six per cent and nothing below that. She was afraid to buy first trust deeds because she claimed sooner or later property would decrease again and she would have to sacrifice even her capital as well as lowering the interest.

I have never mentioned to her not to buy United

(Testimony of Friedrich Walter Bergmann.)
States bonds. I gave her the advice just as I have given it here in repeating it.

Q. In other words, the better the bonds, the lower the interest. Is that it? [478]

A. Exactly, just like anything else.

Q. The higher the interest, the more speculative they become? A. That is right.

Q. Did you tell her as she said you did that German people were more intelligent than American people?

A. I never recollect ever having said that. She maybe did not mean to hurt me; maybe she misunderstood me at that time when we were talking about intelligence and wisdom of people. That doesn't mean to say that one nation should be smarter than the other. Of course, we have a different educational system and——

Mr. Dean: Just a minute, Mr. Bergmann. I ask that the last be stricken as not responsive to the question.

The Court: I think the answer can remain.

Q. By Mr. Jackson: Do you remember Mr. Fred Huggins?

A. Yes, I do. He is my neighbor.

Q. Are you and he pretty good friends?

A. We are not.

Q. There has been a little bad blood between you? A. I should say.

Q. Do you recall him testifying that you said that Hitler was a nice man?

A. I have not said to him Hitler was a nice

(Testimony of Friedrich Walter Bergmann.)

man. Just like I told one other party, Mr. Williams, Hitler thinks he is a Christian man. I don't think I said the word "nice". [479]

Q. Now, did you tell Mr. Huggins when he spoke to you after Pearl Harbor had been attacked by the Japanese Army and Navy that the Japs had to do that?

A. I do not remember ever saying that, never, never. I did not.

The Court: Just a minute. I still didn't get the answer he gave to the other question.

Mr. Jacobson: Let's go back.

The Court: Read it. I got the argument, but I didn't get whether he said he was a good man or a Christian man.

The Witness: No, Hitler thinks he is a Christian man.

The Court: Is that what you told him?

The Witness: That is what I told him. I also told him other people like fanatics might be a believer.

The Court: Read the answer as given; just that part of it.

(Record read.)

The Court: If that is what you intended, that is sufficient.

The Witness: Thank you.

Q. By Mr. Jacobson: The last question I asked you was whether you stated to Mr. Huggins after

(Testimony of Friedrich Walter Bergmann.)

the attack on Pearl Harbor by the Japanese Army and Navy that the Japs had to do that.

The Court: He denied that.

The Witness: I denied that. [480]

The Court: He denied he made the statement.

Q. By Mr. Jacobson: Do you recall Mr. Huggins telling you about introducing you to his mother whose name was Mrs. Duell?

A. Yes. I didn't remember the name at that time, but now since he has been in court I recognize the name was Duell.

Q. Do you remember that you were introduced to her?

A. Yes. I came in one evening for about five minutes, not longer than ten minutes, and he explained, I wanted to get a piece of paper.

He then said to me, "Well, Walter, meet my mother here." She got up and said she just came from Oregon. If I am not mistaken, she didn't reside there, but she said her name was Mrs. Duell.

I said, "Well, that is a French name. I talk French."

She said, "I am not French. I am American."

I laughed and smiled, and said, "I am a Nazi."

Q. What did you mean by that remark?

A. It was just in a joking spirit, just like any one else might do it. I have been known often to do that. They say to me, "Hello, Tarzan." Because I wear my bathing suit six days a week or my shorts. I don't have my dress suit on. A lot

(Testimony of Friedrich Walter Bergmann.)

of people say, "Hello, Dutchman. How are you."

I would answer in the same spirit of socialibility and say, "Hello," maybe if he is English, "John Bull," or "Hello, [481] George."

I have heard "Heil, Hitler" from good Americans who just meant it in the spirit of socialibility, in a joking way; but I never meant to say "Heil, Hitler" in a serious way.

Q. You mean as a German subject would properly say it?

A. Well, you must remember a German subject can not only say "Heil, Hitler" but he has to stand up similar to the way the witness tried to prove here in Court and put his heels together, raise his hand up and speak out not only in actions but in words "Heil, Hitler". That is the way I understand from my American newspapers that the system works in Germany or, unfortunately, in what we call here the German-American Bund where they have that kind of system.

Q. Do you belong to any bund?

A. I do not, and never have.

Q. Do you take any German magazines?

A. I do not read German newspapers. I do not have any German magazines. I never have attended a German meeting, neither in Los Angeles nor any place in the United States.

Q. Do you know the German Consul in Los Angeles?

A. I do not know whether I met Dr. Geisling at the time I went in the office of the German Con-

(Testimony of Friedrich Walter Bergmann.)

sulate in 1932 to get my passport renewed or not. You will find here in this document the word "voided." I had to get for my trip to French Oceania the second passport because I was only in possession of my first passport, and, therefore, that is the [482] party who attended me in the German Consul office. Whether he was the German Consul or his successor or just an ordinary office employee, I can't say. Only I know there were three people in the office and this conversation at the time, when I asked for the permit, that is, a new passport and visa to French Oceania took about ten minutes. Afterwards I had to come back because it was the chief German Consul in San Francisco who had to give his O.K. so it took two weeks before the passport was returned to Los Angeles and I called the second time, then, at that office and got my passport that I had asked for the first time and it was a different party then who attended me. Whether that was the German Consul or not, I can't tell you. Anyway I paid three dollars or five dollars for the issuance of the passport.

Q. At any rate, there is no social acquaintanceship?

A. No, no social acquaintanceship anywhere with regards to clubs or other social meetings. I have never had any contact with Germans in this country.

Q. Have you ever been back to Germany since you left?

(Testimony of Friedrich Walter Bergmann.)

A. I never have seen Germany, never been on German soil since 1911, February 11th, when I departed for America.

Q. Then, as you have indicated, you went to Canada? A. Exactly.

Q. Now, do you have any relatives living in Germany?

A. I have my mother and, of course, so far as I can understand from my last letter which I received in July of [483] last year—that was from my mother telling me my father was still alive. I don't know, though. My mother wrote me, "Dear Walter, I want to mention to you before I die—I am 82 years of age—that your father actually still is alive in Meuhaldensleben and is in the steel and iron business. I only mention this to you because I know you hate your father just like I hate him like I told you before you left for America."

She said to me, "I do it because in case he should die he might remember that he foresook his family, and should there ever be a will left, then, naturally, he might in his last moment before his death remember he has wronged his family and maybe we might be his heirs or receive part of his inheritance."

That was the only reason my mother informed me because I had no feeling, nothing, I am sorry to say, your Honor, for my father. I have absolutely no feeling whatever for my father.

The Court: All right.

(Testimony of Friedrich Walter Bergmann.)

Q. By Mr. Jacobson: Do you intend to go back to Germany?

A. I intended once the war is over to see my mother.

Q. Are you going to stay there?

A. I think I might stay and see my mother, if I can, for six months or eight months, take my mother on down to Italy, the Riviera. She always wanted to go to the Riviera [484] because she has never seen any oranges before in her life with the exception of the time she came to the United States once.

Q. Did you see her the time she came to visit the United States?

A. I am sorry to say I didn't get to see my mother because my mother got the permit from the United States government about June the 2nd.

Q. Not so much in detail, now, Mr. Bergmann. Did you see her when she was here? A. No.

Q. And she went away before——

A. She saw my other two brothers, but not me because they didn't know where I was.

Q. And you learned about it after she returned to Germany?

A. I am very, very sorry to say so, yes.

Q. Now, sir, do you have a lot of securities, cash hidden away in Germany?

A. In Germany?

Q. Yes.

A. I have no securities whatsoever outside the County of Los Angeles.

(Testimony of Friedrich Walter Bergmann.)

Q. Do you have any property outside of Los Angeles County?

A. I have no property whatever outside the County of [485] Los Angeles.

Q. In what banks do you keep your funds?

A. I keep my financial interest in three banks. My main bank is in Long Beach, the head office of the Bank of America on the corner of 4th and Vine. The other two banks are located in Los Angeles, the Farmers and Merchants National Bank as well as the Citizens National Trust and Savings Bank.

Q. You haven't withdrawn your bank account since the service of this action?

A. I have no money withdrawn whatsoever. I gave you all the details to be submitted to this court. Outside of ordinary taxes and ordinary expenses applying to attorneys or assessments, as I say, I haven't withdrawn anything.

Q. Well, business and living expenses is all?

A. Yes, exactly.

I even added to my account, you might say, instead of diminishing it.

Q. Do you remember Mr. Jewels Haschkaw?

A. I do.

Q. How long have you known him?

A. I think approximately thirteen years.

Q. Did you have a conversation——

A. Let's make it this way, from thirteen up to fourteen years.

(Testimony of Friedrich Walter Bergmann.)

Q. It has been quite some time, at any rate? [486]

A. Yes.

Q. Did you have a conversation with Mr. Haschkae in Lincoln Park? A. I did.

Q. For what purpose had you arranged to meet him there?

A. Because prior to this——

Q. Just what was the purpose, Mr. Bergmann?

A. All right. I wanted to show him that sheet of paper, on which sheet I marked down in pencil writing exactly what he told me he would tell in court if I asked him to come as a witness. This piece of writing——

Mr. Dean: Just a moment.

The Witness: All right.

Q. By Mr. Jacobson: In other words, you came to ask him to be a witness?

A. Yes, exactly.

Q. Now, with reference to him being a witness, what reply did he make when you asked him if he would?

A. He said, "Bergmann, I have known you for a long time. I don't know whether the court would like to hear the story or not because I am afraid there are certain things I have to say. That is, they might not hurt you, but they might leave a deep impression upon the court."

I asked him, "What do you mean?"

He said, "I will tell you, Walter. You are an exceptional [487] person. I think you could live

(Testimony of Friedrich Walter Bergmann.)
on air nearly without food if it ever comes to that."

I said, "Well, please go into detail, Mr. Haschkae."

Well, he smiled like he usually does, raised his right hand up and said, "Walter, you are an awful tightwad. That is, Walter, you are so cheap. The people in the neighborhood say that and I know certain things are true. You even save gas because you eat lots of raw fish. You don't want to start a fire to cook your fish."

Then he said to me, "I understand you go over to the wholesale coffee house and when they are roasting coffee you try to guzzle up and save all the coffee beans that fall on the floor so you don't have to buy store coffee."

Q. Is that what he said?

A. Those kind of things. He said he didn't know for sure himself, but it was hearsay, he said, and, of course, naturally, that might come up, what other people think about me, and if that question should be directed to him, he would say those things. Then, he mentioned to me another thing, and that was something which was, I think, very discourteous. He said, "Bergmann, of course, I know and every one knows you are quite a citizen. I know what you have done down there. You have filled in the land, put in trees and shrubs and been a good business man in your own way and made a success financially. But, after all, I feel I can't be of much benefit to you. I know

(Testimony of Friedrich Walter Bergmann.)
that is about all I can say, really. [488] You are loyal and I don't know anything except I remember you said "Heil, Hitler" to me two or three times when you were greeting me when I passed along the fence."

I said, "Didn't you say the same to me one time?" And I said, "Didn't you say, 'Hello, Tarzan, wie gehts,' and I said, 'Sehr Gut'."

He said, "Well, maybe I did, but I didn't mean it."

I asked him, "What do you think? Do you think I meant it when I said to you these expressions of friendship or talked in a joking nature?"

Mr. Dean: Just a minute. If you are going to give his reply, it is hearsay and has no bearing in this case.

The Court: I beg your pardon,

Mr. Dean: The reply would be hearsay, your Honor, and has no bearing in the case.

The Court: I think in view of the fact Mr. Haschkae has testified, and while it is true this is not directed to a categorical denial of the statement it may be done indirectly by giving what the conversation was. However, I think you ought to split it up. I mean you would get along better if you would intersperse a question here and there.

Mr. Jacobson: I will do my best, your Honor.

The Court: The difficulty is counsel can't differentiate nor can I from what the witness is telling us now by way of rationalization of his own actions. I can't tell whether he admitted to Hasch-

(Testimony of Friedrich Walter Bergmann.)

kae that he greeted him twice with the Nazi [489] salute "Heil, Hitler" or whether he didn't, but said he was merely jesting, or whether he was twitting him because he had done the same thing. It is so mixed up in the witness' statement that it is hard to tell which is which.

Q. By Mr. Jacobson: Mr. Bergmann, I want you to get down to the point about the property.

A. Yes, I understand.

Q. Now, when you asked him to testify, he made some remark about some property. Is that true? A. Yes.

Q. Now, give that as quick as you can.

A. He said, "Mr. Bergmann, I will tell you this: I will be a witness for you provided you buy my two lots and warehouse on Santa Clara Street right behind your main property for $10,000.00. I don't need cash but I will give it on terms."

He said, "I will tell you, Walter, I will only take $5,000.00 down in cash and the other $5,000.00 we can split into two different mortgages of $2,500.00 each. Make it $2,500.00 in two years and another $2,500.00 maybe in three years. You know, my son is in the army, and, of course, I am getting old now. I am crippled up with my arm and if you pay me that amount and six per cent interest on the balance, that would be just satisfactory to me. It would be more satisfactory to me than cash."

Q. All right; what did you say to Mr. Haschkae? [490]

(Testimony of Friedrich Walter Bergmann.)

A. I told him, "Mr. Haschkae, this is the way you want to help me?"

He smiled and said, "Well, Walter, what is the matter?" He said, "Is that too high?" Then he continued without I having a chance to talk to him. He said, "I will lower the price. I will make it all cash—I know you are a cash man—I will make it $8,000.00. Isn't that cheap enough, Walter?"

Q. What did you say?

A. And before I had a chance to answer him, he smiled again and said, "Well, $7,500.00. That is the last." And he dropped his pencil which he had in his hand and I picked it up for him. When I picked up that pencil for him I said, "Mr. Haschkae, you call yourself an American citizen. You have known Walter for the last twelve or thirteen years. I came to you once before about three weeks ago and asked you at that time whether you would be willing to be a witness for me and I marked down about eight different answers that you gave me with a pencil on a little piece of paper. That is the piece of paper I have here in front of me and I thought you could call on my lawyer, who is only about two blocks away from me, and if you think you can add anything to these statements in my favor *of* against my favor—it doesn't make any difference—as an American citizen, and then I would be glad if you would come and appear as a witness for me."

Q. What did he say?

(Testimony of Friedrich Walter Bergmann.)

A. I said, "If you approach me now on a business deal [491] and connect a business deal with this—I am in trouble and I am accused—some down from $10,000.00 to $8,000.00 and then come down to $7,500.00," I said, "you ought to be ashamed of yourself." It surprised me and I turned around. I didn't even say goodbye to him. He said, "So long, Walter, God be with you." Just like that in a joking way and in a sarcastic way.

That is all I heard, because I never looked at him any more. I turned around and went back to your office, and the first party I called on was your girl——

Mr. Dean: Just a minute. I ask that the answer to that question be terminated at this point.

The Court: All right.

Q. By Mr. Jacobson: At any rate, that terminated the interview?

A. That terminated the interview with Mr. Haschkae.

Q. Now, referring to Adolph Hitler, there has been testimony here in this court that you admired him and told people you admired him.

Have you made statements of that kind or character?

A. Yes, I have made quite a number of these statements to mostly intelligent Americans. I thought Americans who could think——

Q. Wait a minute. Tell what you said about Hitler.

(Testimony of Friedrich Walter Bergmann.)

A. All right. I will repeat it.

I said, "I saw in the beginning around 1932 or '33, [492] maybe 1934, through the American newspapers that Germany was very much demoralized; that the people I knew before who were very obedient, very lawful, law abiding citizens were rampant. To me, now an American citizen—at that time I was not an American citizen in the sense of the word by having my certificate but I had applied for my application, I mean for my first papers—I felt isn't it sad indeed that Germany was down and out, you might say and didn't have the proper leader. At about that time we heard about Hitler, not so many bad things as we all know today and blame him for rightly. I felt that Germany would have followed the devil, I think, to be pulled out of their misery, out of poverty, out of corruption, graft or whatever you want to call it that was raging in these times of '32, '33 and '34; would have followed anybody who would have said, "Here we are. We can show you how to make the country rich again and prosperous and, like we enjoy here, live in enjoyment."

Now, I heard—that is, I better say I read quite a number of magazines, constructive magazines and books about different countries, naturally including Germany, and when I realized Hitler was talking about a certain movement, that youth movement—we call it the boyscout movement here. I wouldn't say like the Y.M.C.A. It does include the Y.M.C.A. to a certain extent, but we will say

(Testimony of Friedrich Walter Bergmann.)
strictly out of doors in the fullest sense of the word. He called it the Hitler Youth Movement. I told them of my acquaintance—for instance, I [493] would say, "Now, we admire strength. We admire vitality, health. Health is wealth. Health is the greatest thing of all. How can you get it? By living out of doors. Try not to think of liquor and of taking narcotics or, we will say, of bad food, improper ford without proper vitamins. That not alone will be necessary, but you must have bodily exercises."

Q. Is that what you understood?

A. That is what I understood was the Hitler Movement of Youth. As I say, it was similar to our American or any other civilized white man's country's youth movement, athletic exercises.

Q. Did you ever come to the conclusion that the youth movement wasn't as good as you thought it was?

A. I am very sorry to say it did not come out as I expected. And I would like to mention to you more in the years 1935, or the latter part of '35, 1936, '37 and so on I realized that what Hitler tried to do with his left hand in goodness, he has destroyed with his right hand by trying to get those male bodies,—I am talking more about the boys and not about the girls—to get them strong enough so that he could make good soldiers out of them, militarists, for different purposes, whatever purposes you might call it, that is, for war

(Testimony of Friedrich Walter Bergmann.)

purposes, for destruction; not for an asset to build up but for destruction and liability. [494]

Q. Do you admire his youth movement as you now understand it?

A. Never; just the opposite. I was disgusted because he doublecrossed, really, his own people; and not only his own people, unfortunately, the world.

Q. Now, there has been discussion, Mr. Bergmann, that you were an isolationist. You did tell people that, did you not?

A. I have said to people that I am an isolationist.

Q. When did you say that?

A. I have said it many times.

Q. I am speaking with reference to time like before Pearl Harbor or after Pearl Harbor?

A. I mean strictly before Pearl Harbor; never after December 7th on account of the very reason —because after December 7th I figured in a democracy, in a republic like our government, the majority of its people has domination——

Q. At any rate——

A. ——and the minority like Mr. Lindbergh and Mr. Wheeler, including many others, Mr. Reynolds and Mr. Wallace, they went over to the majority. I think not only are we——

Mr. Dean: Just a moment.

Q. By Mr. Jacobson: In other words, the country is at war.

(Testimony of Friedrich Walter Bergmann.)

A. We are going through the greatest emergency——

Mr. Dean: Just a moment. I ask that a stop be put to [495] this explanation of what his opinion of the emergency is.

The Court: All right.

Q. By Mr. Jacobson: Well, the country is at war—— A. Exactly.

Q. ——and that settles all opinions, does it?

A. Exactly.

Mr. Dean: Just a minute. That is irrelevant.

Mr. Jacobson: Is there a motion pending?

The Court: There isn't anything. The answer may stand. He didn't object. He merely said it is irrelevant. I think that is perfectly all right.

In the proof of fraud of any character a man may testify as to his own feelings to much greater liberality than other witnesses might testify. We may ask a person if he intended such an such a consequence or whether he meant such and such a thing.

Mr. Dean: I concede that, your Honor.

The Court: And that is true in all kinds of fraud. This is an action to set aside the citizenship on the ground of fraud, and so long as the witness confines himself to explaining his attitude, there is no objection to the self-serving character of his statements. Ultimately the Court will have to determine what weight to give them in the light of the entire testimony in the record as to what

(Testimony of Friedrich Walter Bergmann.)

his actions were. He is doing better now so let him go ahead.

Q. By Mr. Jacobson: You mentioned having read some books [496] and learned about Hitler's work in reading the Reconstruction of Germany. You mentioned that a minute ago.

A. I read American books, books edited by Americans who either have been visiting in Germany or have received the information through government offices, government departments.

Q. Well, at any rate they were English language books?

A. They were books in the English language, yes.

Q. Have you read Mein Kampf?

A. I never have read Mein Kampf because it is a German book.

Q. Have you read it either in the English or the German? A. No.

The Court: Well, I read it in the German and lectured, in fact, on it at the University of California.

The Witness: I have never read his book.

The Court: I lectured on it early in 1934 and I repeated it as USC. I don't think as a matter of fact American citizenship requires a man to forget his own language. The German language is a beautiful language and the Government doesn't require anybody to forget it.

I am married to an American woman who is the first generation in this country. She didn't'

(Testimony of Friedrich Walter Bergmann.)
speak the English language until she was seven years old. She had brothers in the war, nephews in the war and everything else and she still speaks German. I don't think that matters unless it were shown that [497] a person had particular literature, unless a man were a regular subscriber to particular literature.

Mr. Jacobson: Of course, there is no charge against us, Your Honor, in that respect.

The Court: I know, but I am merely telling you certain things don't mean anything.

There is such a thing as leaning over backwards sometimes. You know what Hamlet said, "Me thinketh the lady doth protest too much." And sometimes you can protest too much.

I don't want the man to deny he doesn't speak German or anything of the kind. It is all right if he doesn't, but I think he is missing something if he deprives himself of the cultural value of the language.

You have heard me speak before the Bar Association and I bring in French words, German words or any words I know that help me put over a joke or an idea. People who know more than one language do that constantly.

All right; his answer may stand. He hasn't read Hitler's Mein Kampf in the original.

Q. By Mr. Jacobson: Mr. Bergmann, you heard a witness testify in this court that you called President Roosevelt a son-of-a-bitch.

(Testimony of Friedrich Walter Bergmann.)

A. I hate to hear that word again, but he accused me, yes.

Q. Did you call him that?

A. I never have. [498]

Q. Have you in your mind differed with President Roosevelt in his policy?

A. I have prior to December 7th, but not after December 7th.

Q. Have you expressed your difference of opinion to people? A. To many people.

Q. Is there anything about President Roosevelt that you have found admiration in?

A. Admiration? I most certainly have, as a tolerant person. I have my likes and dislikes about President Roosevelt. You mention "admiration." I could mention you several points if you want me to.

Q. Just briefly, what in President Roosevelt's career do you admire or do you find yourself in agreement with?

A. I will say I am in agreement with regard to those points—that is, I am going back again to the depression years—I think it was wonderful on the part of our President when he tried to help the youth of the nation especially, which is the backbone of any nation, those who couldn't find employment. I liked his CCC camps, that is not only boys of good families but also boys of the delinquent families. The latter is especially much more important because these boys would make criminals later.

(Testimony of Friedrich Walter Bergmann.)

I admire his great acknowledgement to youth, the backbone of any nation. All right, that is one point. [499]

I would say the second is that President Roosevelt actually has been very agreeable to the working man, that is, in trying to assist him to get more rights in regard to his economical benefit and with regard to his financial benefit so that these laborers could see the spirit of cooperation of our government with President Roosevelt at the head of it. They formed unions and to a certain extent, as long as they go in a moderate way in doing so and in cooperation with industry, they kept these rights up to this day. I think our President Roosevelt has done more in these last ten years, that is, to the best of my knowledge of American history, than any other President.

The Court: How does it happen you feel that way? You never have registered as a voter and voted.

The Witness: I can mention this to you: I did not feel qualified to vote two years ago. Shall I give you the reason why, your Honor?

The Court: Yes, go ahead.

The Witness: I am glad to do it.

The Court: You didn't participate in the political life or even in your local life of your own community in the democratic fashion which Americans do, those who are interested in having certain things done.

(Testimony of Friedrich Walter Bergmann.)

The Witness: I am glad you give me this opportunity to speak out.

I was not qualified, as I say, because of many conflicting [500] statements that were made by Mr. Willkie and by Mr. Roosevelt and other officials who wanted to be elected. I felt I would be a hypocrite if I just voted because I have the right to vote as an American when I really didn't know whether they meant them as just political speeches or whether they were in earnest when they spoke.

The Court: You have a lot of leisure which enables you to study.

The Witness: That is true.

The Court: And you have means. After all, you have a good education, a good background. Your knowledge of English is good and you have ways of sifting the *faults* from the truth.

The Witness: Thank you, your Honor.

The Court: I am not asking you why you didn't vote in a particular way; I am just asking you why, having definite ideas of social betterment you didn't participate in local or national elections which are the only means we know in the United States of effecting the reforms that we believe in and knocking down those we don't believe in.

The Witness: Your Honor, one man can express his feelings in a much more deeper way than another man, especially these men who have deeper feelings for the things of life. If they are not convinced, then they feel unqualified. I speak to you in that spirit, in that vein. I have very care-

(Testimony of Friedrich Walter Bergmann.)
fully and deeply studied so many of these speeches of [501] Willkie and Roosevelt that I felt in the end confused. And I must repeat again in this court that I feel I am not going to be a hypocrite and just vote because I have the right to vote.

This time it was different. This time I was not confused. I voted in the elections of the State, the primary and the final. It is my duty at this time especially.

The Court: All right.

Q. By Mr. Jacobson: Well, of course, there were things about President Roosevelt's policies you didn't like, too, weren't there?

A. Of course, I didn't say all of what I liked. I didn't complete that angle yet. I pointed out the CCC camps. I pointed out with regard to the laboring classes. Of course, there are very many others. I don't want to take any more time than necessary but I can continue.

The Court: I think that is sufficient unless you want to bring out something specific.

I don't think ordinary opposition to policies of an administration in peace time is in itself significant of one thing or another. It only becomes material when taken as a part of a course of conduct when put in its proper place.

Q. By Mr. Jacobson: Now, you have heard testimony, Mr. Bergmann, that you were a Jew hater.

The Court: I don't think that that has anything to do [502] with it unless you want him to dispute

(Testimony of Friedrich Walter Bergmann.)

a certain proposition. Any man has the right to hate a Jew if he wants to. Some people hate Catholics and some people hate Protestants.

Mr. Jacobson: I think the importance is that this man was born in Germany and left there and Hitler, of course, has expressed considerable dislike for the Jews.

The Court: Did you read Senator Holmes' last speech before the passage of the Lend Lease Bill and Senator Wheeler's speech?

Mr. Jacobson: No, I did not.

The Court: It might as well have been written by Goebbels.

Have you ever heard Father Coughlin's speeches over the radio?

Mr. Jacobson: Oh yes.

The Court: Of course, they are all of the same type. They all talk about the international Jew. Mr. Wheeler talked about the Rothchilds and others, asking us to come and fight England's war to save their investments when Rothchilds were either rotting in jail or all their estates had been confiscated long before. So I don't think it is of any significance what Hitler is doing to the Jews or what he is not doing to the Jews.

Mr. Jacobson: Well, of course, it is very difficult to present a case like this, your Honor.

The Court: I mean not that I don't want you to deny it, [503] but to ask him what his views were is immaterial. If you ask him to deny a thing said in conjunction with another matter it is

(Testimony of Friedrich Walter Bergmann.)

perfectly all right, but in itself it is immaterial. A man doesn't have to profess love for any particular group in order to be truly an American citizen. A man might dislike a group, and so long as he does not believe in discriminating against them in political life and depriving them of citizenship, it doesn't reflect on his Americanism at all.

If you want him to deny a specific thing it's perfectly all right, but I don't think his views on the Jews and their place in the world is of any importance.

Mr. Jacobson: As I recollect the testimony, somebody said he stated he hated the Jews.

The Court: No, they said he thought Hitler was right in dealing with them, that they caused the war, or something like that.

Father Coughlin said the same thing. Senator Wheeler said the same thing. You should read the last issue of Time Magazine. You will see some of the things that some of these Congressmen that have been elected said about Roosevelt. One called him a maniac and one praised Hitler.

We shouldn't lose the perspective in this case. We have to take into consideration, to use the German word, the gestalt of the thing to determine it, not pick out a little thing here and a little thing there. [504]

Mr. Jacobson: Well, I don't want to reproach myself later for not having presented the matter fully.

The Court: You didn't ask the question in that

(Testimony of Friedrich Walter Bergmann.)

manner. I objected to the manner in which you asked it.

Mr. Dean: I was going to say, your Honor, there was one statement by one of the witnesses that Mr. Bergmann had allegedly stated that the press of America was controlled by the Jews.

The Court: Oh yes, there is such a statement.

Mr. Jacobson: I have a note that Thomas Shields said that Hitler said, "I don't like the Jews."

The Court: All right, if you want him to say he likes them, it is all right with me.

Mr. Jacobson: No, I don't want him to say that.

The Court: I don't care how he feels toward them. If you want to have a categorical denial of anything in the record go ahead and do it; but I didn't want you to bring in a question that I don't think is material. So far as charging certain influences on the Government, that is material because it exhibits a pattern of mind that may be important.

Mr. Jacobson: Very well.

The Court: That statement might be important as exhibiting a pattern of mind because that pattern exists in certain groups and has been repeated here in this country repeatedly. So when you see a pattern you may trace its origin and draw a certain consequence from that fact. [505]

Q. By Mr. Jacobson: Do you remember Mr. Graham testifying here the other day, Mr. Bergmann? A. Yes, I do.

(Testimony of Friedrich Walter Bergmann.)

Q. Do you remember him making this statement in substance——

The Court: Let's see; Graham was the police officer, wasn't he?

Mr. Jacobson: Yes; who visited him frequently.

The Court: That is right. I just wanted to identify him. There were so many here.

Q. By Mr. Jacobson: Do you remember Mr. Graham saying in substance that you said, "I obtained my citizenship papers as a business protection and I will bless God when I can tear them up and leave this country."

Did you hear him say that?

A. I heard him say that.

Q. Did you tell him that? A. He is a liar.

Q. Did you ever tell anybody you would bless God when you could tear them up?

A. I never did in my life and never will.

Q. Did you ever have any intentions of tearing them up? A. Yes, I did.

Q. When?

A. Once I mentioned to Mr. Beck and those three other officials when they called on me for a contribution to the [506] YMCA, I said to Mr. Beck, "Should it ever be that we have a union with the British and in that union the aristocracy, the nobility, what we call the dukes, the counts and the barons, I would tear them up."

I included as an example the fact that you might meet Mr. Smith on the street and have to address him as "Lord Smith" just because he was born in

(Testimony of Friedrich Walter Bergmann.)

that class. He would be offended if I didn't say "Lord Smith" but just said "Mr. Smith" to him.

I would like to see the English talking people form a union only in that spirit that they are strictly adhering to the republic and democratic rules of this country, but not including any nobility; because if we have nobility then we have class distinction, and if we have class distinction it is just like George Washington says in his farewell address, we have disruption, and we want to be away from those things.

Q. In other words, you didn't want one political government, that is, one nation out of the two nations? Is that it?

A. Oh yes, one nation, because we are the English talking people. That doesn't make any difference whether they are English or not. They are called Welchmen, Scotchmen, Irishmen, Australians, New Zealanders. We are all English talking people.

Q. Let's get back to the question I propounded to you. You say you never made the statement. Then I asked you if you ever made the statement to anyone else and you started [507] to tell us whether you made it or did not make it to this group from the YMCA.

A. I made the statement.

Q. You told them then that you would tear your papers up if you ever had to kowtow to English royalty?

A. If I ever had to kowtow to English royalty

(Testimony of Friedrich Walter Bergmann.)
and nobility, correct indeed, I would; right this day I would.

Q. How did the question come up? Did they mention anything?

A. Yes, because Mr. Beck offended me in certain ways. He said, "Here you are, Walter. I know you and have known you for many years. You know what Germany is. Look at the dictatorship you have at home and the imperialism when Kaiser Bill was there. Now, we have come for a contribution. I think it is very disloyal the way you look at things."

So I answered him in the same conversation, "I think I do my duty. I give to charity personally, direct to persons right in this community, Mr. Beck. Besides that I contribute quite a bit to charity, about $200 a month through my taxes and otherwise. Also I give directly to organizations. Now, you feel that since I like so much the YMCA that you would come out for a contribution. You came out a year ago. You even came two years ago with your wife. I also told you, Mr. Beck, in my inheritance, in my will—I have told you last year and the year previously—I will donate quite a bit of my wealth to the YMCA. [508]

"Now, a man can express himself in such a spirit, Mr. Beck, and still be a patriotic citizen."

Then he answered me, "Well, Walter, we are living now in these days. You may not die for 20 or 30 or 40 years when God wants you to die. We need the money now."

(Testimony of Friedrich Walter Bergmann.)

I said, "Well, everyone has his own ideas. I refuse you this time again, Mr. Beck, in the most cordial spirit because, as I said before, I have my intentions, I make my donations in my own way, the way I like them to be made."

And then he said, "You ought to be ashamed of yourself, Walter. Here you came from Germany. You got your wealth here. You got oil. You got real estate and bonds and stocks and you are so tight," he said, "I am ashamed of you."

I said, "I am not ashamed at all in this regard and I think I am doing my duty when I do it in a different way than some other people express their gratitude to the country."

Q. The question was with respect to a common union with England.

A. Exactly. We continued then afterwards about other things, political and otherwise and he mentioned to me that I was an American citizen and was used to speaking the English language and used to the English ways, therefore I should know how to behave myself. Then came the conversation about the English talking people in general. He said to me, "I am a Dane but I am proud to be an American and you should be in the same spirit."

[509]

He said, "I have not done as well as you have, Walter," and that is the way we continued for some time and he said, "That is the way of the English talking people, the English people in general. They will all have that same combination of thoughts

(Testimony of Friedrich Walter Bergmann.)

because this is democracy. You have been away for a long time from a country which has nothing but Prussianism or Imperialism, or whatever you want to call it, and now in these days we have to get strength and strength is by merger or union like you no doubt have read in the papers. We have intended to unionize maybe the British and American peoples. Wouldn't that be a wonderful thing, Walter?"

Q. Is that what Beck said? A. Yes.

Q. What did you say?

A. I said, "You think it is wonderful, Mr. Beck. If that should happen, including the nobility, I would tear my American papers to pieces. I would be glad to be with that union if it is not with aristocracy of Britain," and the other party, I don't know who it was, said, "Let's go, Mr. Beck. It is no use to talk to that man." And they just turned and said, "Goodbye." That is the story.

The Court: And they didn't get a contribution?

The Witness: No, they did not, because I had explained to Mr. Beck three times before what my thoughts were. I give my contributions directly in the district. [510]

The Court: All right.

Q. By Mr. Jacobson: Do you remember when Mr. Casey and Mr. Gibbons called on you?

A. I do; I think May 9th of last year.

Q. About how long were they there?

A. Altogether I would say from 1:30 or 1:15 to as late as, I would say 7:00 o'clock or 7:30.

(Testimony of Friedrich Walter Bergmann.)

Q. Was there any interruption at all there while you had your dinner?

A. Was there any interruption while I had my dinner?

Q. I mean, did they keep on talking to you all of the time?

A. Well, certainly not, because they told me that they had also a search warrant and I said to them, "Just keep it right in your pocket, Mr. Casey. I don't even want to look at your search warrant. You are welcome to search my property and the garage, whatever you want to call 'property', even the grounds, if you want, underneath the house."

Q. You don't understand me, Mr. Bergmann. I say they were there perhaps six hours?

A. Yes, I'd say from 1:15 or 1:30 to 7:00 o'clock.

Q. Were you and Mr. Casey and Mr. Gibbons more or less together during that period or did you take time out to eat?

A. No, we were always together with the exception they left the place between the hours, I think, of 4:00 or 5:00 o'clock, or 3:30 and 5:00 o'clock to write down in his auto- [511] mobile his paper from the penciled written copy.

Q. Who was writing?

A. Mr. Casey. It took an hour or an hour and a half in the middle of those periods between 1:30 and 7:00 o'clock, we will say.

Q. Mr. Casey wrote out the one you finally signed? A. Yes.

(Testimony of Friedrich Walter Bergmann.)

Q. But I mean while you and Mr. Gibbons and Mr. Casey were talking together were there any notes taken by anybody?

A. Nobody else. I was telling my things and he took those notes right there. He was sitting right beside me on my bed.

Q. Who? A. Mr. Casey.

Q. Those notes were taken in pencil?

A. Exactly, every word what I said, right away at the same time he marked down with his pencil on a yellow piece of paper. I am pretty sure the color was yellow.

Q. Something like a lawyer's tablet?

A. Yes, with pencil, every word. He didn't wait until afterwards. Out in the car it was rewritten by him in the presence of Mr. Gibbons in ink.

Q. Have you ever seen that penciled memorandum? A. Not here.

Q. You read the statement which has been introduced in evidence, I think, as Government's Exhibit 2? [512] A. Exactly, yes.

Q. This consists of nine pages, letter size?

A. Yes.

Q. Now, you have read this since you came to Court? A. I did.

Q. Is there anything omitted from here that was discussed between you and the two agents?

A. Yes; I am satisfied not only in one instance but in several instances Mr. Casey did not actually mark down on this paper which is written in ink

(Testimony of Friedrich Walter Bergmann.)

exactly the quotation that was on the penciled copy. I called his attention to that in front of Mr. Gibbons.

Q. What did they say?

A. Mr. Casey said, "I will tell you, Mr. Bergmann, some of those things, I don't think they are really necessary."

I said, "Well, don't you think it is necessary that I bought a United States Government Bond right away, seven days after the Japs declared war?"

"Well, I don't think so." That is all he said.

I said, "Well, if you don't think so, it is perfectly okay with me. You can leave it out. Only I want to ask you this question——"

The Court: He put it in on the last page.

The Witness: He just puts in "A bond."

The Court: That you bought a thousand dollars worth of bonds and intended to buy an average of a thousand dollars [513] worth of bonds every six months. That is on the last page.

Mr. Jacobson: It says here, "I have bought about $1000 in U.S. Defense Bonds and plan to buy $1000 worth every six months."

The Witness: I beg your pardon. I take back what I have said. I am sorry. You have it down, Mr. Casey, so I apologize to you in public.

But there are other things, Mr. Casey, and I have called your attention to it and hope you will remember it and repeat it in court because Mr. Gibbons wasn't present. I said, "There are many more

(Testimony of Friedrich Walter Bergmann.)

things——" I won't say "Many" I would say six or seven or eight.

Q. By Mr. Jacobson: Without going into detail can you just list them by subject-matters on your fingers, these subjects which were discussed and do not appear in this statement?

A. Well, I only had the pleasure of reading it over again here yesterday and today. Naturally, if you have never been approached by the FBI agents in your life, any man, even with a good clean conscience feels depressed by such a thing and I was very much upset. I was pretty well able to take control of my body and my mind, but nevertheless I felt depressed.

The Court: You are not answering his question. He wants you to tell him something about the things that you [514] told Mr. Casey that he left out.

Mr. Jacobson: May I suggest the topics to him, your Honor?

The Court: Go ahead, ask him.

Q. By Mr. Jacobson: Was there any discussion about whether or not you had thrown a United States Navy uniform on the ground?

A. Yes, he asked me once——

Q. Was there a discussion about that?

A. Yes, he asked me once that question.

Q. And your reply was what?

A. I replied, "I never have thrown down any United States uniform."

The Court: That is in the statement.

Mr. Jacobson: Is it?

(Testimony of Friedrich Walter Bergmann.)

The Witness: I gave the reasons.

The Court: It is in there.

Mr. Jacobson: I forgot that one, your Honor.

The Court: I have gotten so I know it better than you do.

Mr. Jacobson: Maybe you have studied it better than I have.

The Court: I have. Don't you think I didn't study it.

The Witness: It is in there.

Mr. Jacobson: Maybe I had better not suggest things.

The Witness: I do remember it. The Judge is correct. [515] He asked me the question "Did you ever throw down any United States Navy uniform?" That is the question.

Q. By Mr. Jacobson: Yes, but I understand the Court says that is in the statement.

A. Yes, it is.

Q. What I was trying to get out of you, Mr. Bergmann, is this: You said there were things that you and Mr. Casey and Mr. Gibbons talked about that don't appear in this statement.

The Court: I will see if it is here.

The Witness: He didn't put down charitable contributions.

Q. By Mr. Jacobson: Is that in there?

A. No.

The Court: Well, everybody has testified with respect to your intentions to leave all your money to charity, so that is all right.

(Testimony of Friedrich Walter Bergmann.)

The Witness: It is prior to this. Right now I am living, your Honor. That has not been put down "During my lifetime," I don't mean after my death.

Q. By Mr. Jacobson: You mean you talked about charitable donations now?

A. Certainly. I have given about $200 every year through my city and county taxes. You have here an exhibit to prove about what the amounts are.

Mr. Dean: Your Honor, it is on the next to the last [516] page.

The Court: I have it. I knew it was in there. Here it is. "On one occasion there was some——" Casey writes just like a lawyer. I can't interpret his writing.

Mr. Jacobson: I understand he is a lawyer, your Honor.

The Court: They are, most of them, except those that are accountants. You know, we lawyers are notorious for our writing.

Well, you see, he explains it there. He said some may have been washed off or something, washed off the lot, maybe.

Mr. Jacobson: Yes, that is in there, your Honor.

The Court: All right.

Well, so long as Mr. Jacobson has failed in two attempts to call your attention to something that is missing, maybe you can try and tell us something aside from your charitable contributions, something you told Mr. Casey of importance that you think he left out.

(Testimony of Friedrich Walter Bergmann.)

The Witness: He left out, for instance, I never have had an automobile. I never have had a radio. I never have had a telephone in my house. Those are all matters with regard to transportation and communication facilities. So many people have accused me wrongly, that I might be a German agent or a German spy, and, your Honor, those things relating to transportation and communication facilities are absolutely necessary for a spy and an agent. Those things I mentioned to Mr. Gibbons and Mr. Casey. [517]

The Court: Well, others have testified to the fact that they have never seen you possess means of transportation so we will leave it as it is now.

The Witness: I also told Mr. Casey about a man in 1936 or '37 who approached me.

The Court: That is in there.

The Witness: No, that is a different party. That was in 1941.

The Court: I see. You mean again in 1941?

The Witness: There have been two different occasions. He only refers to the last occasion which is in the paper, but not the former one. He never put that in. I told him that in front of Gibbons. What he put down refers to 1941, a man by the name of Herman or Hermann, but the other one he did not put down and actually Mr. Gibbons in front of Mr. Casey asked me the question, "Mr. Bergmann, if we would come down in a few days and bring an album of photographs, do you think you could

(Testimony of Friedrich Walter Bergmann.)

identify that person whom you say is 6 feet tall with blue eyes and blond hair?"

He had his head, of course, but I told him I thought it was very fair hair. Anyhow he called on me in about 1937 during June or July while I was working out in my garden. He mentioned his name but unfortunately I do not recollect his name, like I told Mr. Casey and Mr. Gibbons.

He said, "Mr. Bergmann? Is that your name?" I said, "You will pardon me; I am digging a hole for a [518] tree here and I am dressed in my old clothes."

He said, "That is all right." He said, "Could I talk to you for a few minutes?"

I said, "Let's go sit in the garden house." So we went and sat down in the garden house.

He said to me, "Mr. Bergmann, you have been recommended to me as a person with very high intelligence, from German acquaintances you have in Los Angeles."

I said to him "Mister (I have forgotten his name now) will you please tell me who these German acquaintances are because I do not have any German acquaintances in Los Angeles?"

He smiled and said, "Will you be kind enough to look us over?" He said, "I will tell you what I really wanted to ask you. There is good money in it for you. Is it possible that you could inspect certain merchandise which is either imported or exported from the Los Angeles Harbor and otherwise

(Testimony of Friedrich Walter Bergmann.)

give us certain information we might ask you sooner or later?"

Before he got finished with it, I said, "Mr. (whatever his name was) I think you must be mistaken." I got up from my bench in the garden house and said, "Mr. (whatever his name was) I think you have the wrong person. All I want to ask you in the most courteous way is, Will you please leave my premises?" He was very polite. He smiled, put his pencil back into his pocket and said, "So long. Good luck to you." And he left. [519]

If I had been smart enough, I am sorry to state, I could have maybe taken down the number of his car.

Mr. Casey—no, it was Mr. Gibbons who asked me, "Mr. Bergmann, do you remember what kind of scar he had? Or did he have a scar?"

I didn't mention it at first to Mr. Casey. I remember he had a small scar over his right eye and one below on his head.

Mr. Gibbons said to me afterwards, "Well, Mr. Bergmann, if you think it is possible that you could identify that man's photograph, maybe I know who he is. We might come down in three or four days with an album. Would you be here?"

I said, "Sure; I am certain I will. Sometimes I am away for awhile, but you just leave a note." But the FBI agents never came back.

Mr. Jacobson: Q. You told Mr. Casey——

A. That was in 1937; I would say either in June or July.

The Court: That is what you told Mr. Casey?

(Testimony of Friedrich Walter Bergmann.)

The Witness: That is what I told Mr. Casey. Pardon me. I think it was Mr. Casey. It was Mr. Gibbons who gave me the reply whether I would be able to identify that person.

The other case is about Mr. Herman or Hermann.

The Court: Well, that is already in the statement. There is a statement in there about Hermann. [520]

The Witness: Is there a statement about the Second Engineer who called on me with a photograph?

The Court: Yes, that is in there.

The Witness: Oh, I see.

He told me he came from the German Consulate.

Mr. Jacobson: Okay, Mr. Bergmann.

Q. Do you recall anything else you discussed with Mr. Casey and Mr. Gibbons which is not in the statement?

A. It is pretty hard to answer this question, your Honor. I have not had full opportunity to read this carefully. It might be in a half hour's time I could remember more, but to my recollection that is all.

I earnestly request your courtesy that the pencil copy of Mr. Casey's be introduced in this court.

The Court: We will leave it to your attorney to request it, if he has it.

The Witness: I thank you.

The Court: All right.

Mr. Jacobson: I am asking you if you recall anything else. By way of suggestion was there some discussion about the Coast Guard in Long Beach?

(Testimony of Friedrich Walter Bergmann.)

A. Yes. I think—let me see—it was May when he called. You mean afterwards.

Q. No, I am talking about the statement, Government's Exhibit No. 2. You have previously informed the Court that the statement is not complete, that is, that there were things [521] you talked about and told Mr. Casey and Mr. Gibbons that were not written up and you have mentioned this incident of the man in 1937.

A. Yes, of course.

Q. Do you recall anything else?

A. His Honor, the Judge, he thought about contributions only after my death. I want to again point out——

Q. Wait a minute.

A. ——it is during my life I made contributions.

Q. Let's stay on one subject only, Mr. Bergmann.

A. Yes.

Q. I was to give you every opportunity, and the Court does, to explain things that you talked about with Mr. Casey and Mr. Gibbons which presumably you think they wrote down on a yellow sheet of paper, but which are missing from the copy that Mr. Casey wrote out in longhand and which you signed after making certain corrections.

Now, you have given us one item.

A. Yes.

The Court: Are there any others?

Q. By Mr. Jacobson: That is the subject we are trying to stay with.

A. Yes. I plainly told Mr. Casey and Mr. Gib-

(Testimony of Friedrich Walter Bergmann.)

bons that I had had admiration for Mr. Roosevelt, especially since 1932, the time of the deep depression in our country, and gave him reasons for it. I told him about the CCC camps and [522] about the old people's pension fund and all of that; that we have to give credit for many things to Mr. Roosevelt.

Q. Did you tell them that?

A. Yes, I told them things I like about President Roosevelt, and, of course, I told him also I was disappointed that it was through our President Roosevelt that liquor got back again in 1931. I also told Mr. Casey——

Q. You don't like that?

A. Because Mr. Casey was asking me—he said, "I see some liquor right here, Mr. Bergmann."

I said, "That is only light wines." I said, "I do not believe in liquor if it is a heavy liquor like whiskey and gin. I absolutely believe that they should be prohibited. If we only had light wines and light beer, what a great nation we could be in the future. Whiskey and alcohol ruins a nation."

Q. Wait a minute. Did you tell Casey that?

A. Yes, I remember I did, because he smiled about the jug of wine he noticed down there on my kitchen cabinet.

Q. Casey thought that was liquor?

A. He knew it was liquor, or it was light wine. I offered him the wine and I offered it to Mr. Gibbons and both gentlemen told me, "Well, we are not permitted by law to drink."

The Court: On duty.

(Testimony of Friedrich Walter Bergmann.)

The Witness: Exactly. That is correct. I forgot that. [523]

Mr. Jacobson: Could we adjourn now, your Honor?

The Court: Yes. We will take our regular adjournment until tomorrow morning, gentlemen.

(Whereupon at 5:05 o'clock P.M., an adjournment was taken until 10:00 o'clock A.M., Friday, November 20, 1942. [524]

Los Angeles, California,
November 20, 1942.
10:15 A.M.

The Court: Are there any ex parte matters?

(No response.)

Calendar matters?

(No response.)

Cause on trial.

FRIEDRICH WALTER BERGMANN

the witness on the stand at the time of adjournment, resumed the stand and further testified as follows:

Mr. Jacobson: May I have Government's Exhibit 2, please?

Direct Examination (Continued)

By Mr. Jacobson:

Q. Mr. Bergman, I show you Government's Exhibit No. 2, and beginning with the last paragraph I want you to look at that and I will ask you a question about it.

A. (Examining document.)

Q. What is that, page 6, Mr. Bergmann?

A. Page No. 4.

Q. 4? A. Yes.

Q. In this statement taken by Mr. Casey and which you signed, you notice the statement there, "I am disgusted with the white men for getting into this war"? A. I do. [526]

Q. What do you mean by that statement?

A. When the last war was ended in 1918 in the defeat of the other nations we fought against—that is, Germany, Austria, Bulgaria and what we call the enemy nations, in other words—the statesmen failed to so organize the world afterward to keep peaceful nations from being attacked by aggressor nations in the future.

Q. In what way?

A. That is, they failed to do that.

Q. In what way do you think they failed to do that?

(Testimony of Friedrich Walter Bergmann.)

A. Well, I would say Italy, Mussolini of Italy invaded Ethiopia, for instance, and the Japanese invaded Manchuria and the statesmen of the world did not stop Hitler when he went into Austria and part of Poland and attacked other nations. They should have had enough nerve then as statesmen of the world to prohibit Hitler from doing that. They did not do that; they appeased Hitler.

Q. You have in mind something like the League of Nations?

A. Call it the League of Nations if you wish—I don't know, whatever name you might put to it—a police force of the world, the different statesmen of the civilized nations of the world gathered together in an association that is called, say, the League of Nations so as to prevent any future aggression, so they can never even have the opportunity to attack and invade another peaceful country whether small or large in size. [527]

Q. Now, read on in that statement—it is about four or five lines—until you come to the statement, "The whites should attend their own business."

Have you found that statement?

A. Yes, "The whites should attend their own business."

Q. Do you care to explain that statement?

The Court: Well, that statement goes with the complete statement. That in itself doesn't mean anything. The sentence which follows it there shows what he means. He says, "East is east, west is west,"

(Testimony of Friedrich Walter Bergmann.)

and so on. The entire paragraph should be read, not one sentence separately.

The Witness: I meant by "The whites should attend their own business"——

The Court: Just a minute. I read this with a pencil and in going over it I checked certain things on the side, but I will take them off because they don't mean anything except to me. Go ahead and explain that "The white people should realize——"

Mr. Jacobson: No.

The Court: The entire paragraph should be read if you are going to have them explain it, because it says, "I am disgusted with the white men for getting into this war." Then he went on to say, "The white people should realize that east is east, west is west, north is north and south is south. They should not go beyond their rights. The whites should attend their own business. Other races should be [528] allowed to worship as they please and missionaries should not be sent to tell them they shouldn't worship their idols." That is a complete thing in itself. I can't see that it helps very much to take one sentence at a time. Evidently this is the familiar cry of "Asia for the Asiatics."

Mr. Jacobson: That is just the point, Your Honor; I don't think it is. That is why I want him to explain what he had in mind.

The Court: To explain it you can't take just one sentence.

Mr. Jacobson: Of course, this man is not a skilled writer of the English language.

(Testimony of Friedrich Walter Bergmann.)

The Court: Well, I don't know whether he is or not. It is all right with me if he wants to explain each paragraph, what he means, but that is a complete philosophy just as there are others in there which should be taken together. To take just one sentence—for instance, "The whites should attend their own business" is an innocuous statement that anybody could make. But when you take, "The white people should realize that east is east, west is west, north is north and south is south, they should not go beyond their rights. The whites should attend their own business." Then it isn't just an innocuous statement. It expresses an entire thought.

Mr. Jacobson: That is right, and I think the thought is incomplete and misleading. I don't think it is complete.

The Court: I have no objection, except I don't think it [529] is proper to take the top statement and the bottom statement of this entire paragraph and have him just explain them and not take the whole thing as a whole. Of course, that could be done later on after you have completed the examination. I am not trying to interfere with your method of examination. Some of these are very difficult to decipher because things were scratched out and he wrote over them.

The Witness: The reason is because——

The Court: You go ahead. You have heard me read the entire statement. You go ahead and give what expression you have.

The Witness: I meant particularly that——

(Testimony of Friedrich Walter Bergmann.)

The Court: What you meant by the expression.

The Witness: Each nation to have the right to live its own way as each nation wants to live as long as they don't aggress on the rights of others, whether they are small or large.

Q. By Mr. Jacobson: What about religion, Mr. Bergmann? A. I beg your pardon?

Q. What about religion? You have mentioned in here about worshipping as they please.

A. Well, the same thing. I feel that if the Africans or the yellow people want to worship one idol or two idols or three idols, they have the right to do so. It is not for us white men—it is not right for us white men to send missionaries there and tell the people they do wrong, that they will [530] not be received in the Kingdom of Heaven just because they happen to worship several idols. They show respect. They know they are inferior to something supreme, something superior.

Q. Wait a minute. In other words, you think they have a right to their own religion?

A. That is it exactly.

Q. Do you have the statement in front of you?

A. Yes.

Q. If you read down—I think it follows the words "They should rather prevent human sacrifice and head hunders"—you will find the next sentence starts "As an American citizen——" Will you read the next two or three statements?

A. On page 5?

Q. I believe it is on page 5. I can find it for you.

(Testimony of Friedrich Walter Bergmann.)

Starting with "As an American citizen——" and then there are two or three sentences. Read them out loud.

A. "As an American citizen I would defend this country wherever the U. S. flag flies. It is not correct to be sent outside the borders of the United States to fight under a foreign flag. I want to see the end of the Hitler regime in Germany. I want to see Hitler licked but not the German people."

Q. Now, it would appear there is a contradiction in two of these statements. You have said "As an American citizen I would defend this country wherever the U. S. flag flies." [531] Then you say "It is not correct to be sent outside the borders of the United States," you said, "to fight under a foreign flag."

A. I mean as an American citizen I would defend this country wherever the United States flag flies. The other statement is not quite clear. There is something missing, what Mr. Casey no doubt marked down on his original pencil copy which he used in my house. I would like to have that pencil copy.

I would defend this country wherever the U. S. flag flies. That is what I mean.

Q. Now, Mr. Bergmann——

The Court: Did you mean to say you didn't make the statement "It is not right to be sent outside the borders of the United States to fight under a foreign flag?"

The Witness: I did not mean—not that meaning. I never did mean it that way because you can see

(Testimony of Friedrich Walter Bergmann.)
yourself, your Honor, "As an American citizen I would defend this country wherever the U. S. flag flies." That is why I asked you to read over carefully the penciled paper.

The Court: If it exists, I will have the Government produce it.

The Witness: This is incomplete.

Mr. Dean: Your Honor, may I say at this time, of course, we do have Mr. Casey's notes and are very happy to produce them if the Court wishes them. [532]

The Court: The witness of his own accord feels there is a deviation and, certainly, he has made certain changes. There are a couple of pages here where he has changed the contents. I have studied this paper very carefully where there are changes here that entirely transform what was down here and in view of his feelings that this may not correspond to the notes, why, if there are notes I want to see them.

Go ahead.

Q. By Mr. Jacobson: Did you ever see Mr. Casey's private notes?

A. I did, because he was sitting right beside me on the bed.

The Court: That is all right. They are there any they will be produced in due time.

Mr. Jacobson: I just wanted to know if he read them.

The Witness: No, never. I know he wrote them down, but I never read them.

(Testimony of Friedrich Walter Bergmann.)

Q. By Mr. Jacobson: You know what is in this statement because you signed it.

A. I know what is in this, yes.

Q. Now, let's go ahead. Do you remember both Mr. Kennedy and Mr. Vaughn of the Building Department? A. Yes, I remember them.

Q. They testified as follows: "We—Hitler will use gas to win the war." Do you remember them saying that, both [533] of them?

A. Yes, I do.

Q. That you told them that in the Building Department? A. I did not.

Q. Did you tell them that?

A. No, not the way they have said it in court. They must have misunderstood it, because we talked about the war in general and I said, "I believe Hitler will use gas if he sees that he is losing the war." That is what I said to them.

Q. You said "He would use gas"?

A. I am quite satisfied they misunderstood me because I never said "We". I am very sorry they ever made that statement. I have high regard for Mr. Kennedy, especially.

The Court: All right.

Q. By Mr. Jacobson: Now, Mr. Bergmann——

The Court: Let me interrupt. I just want to ask one question.

In looking at this I found it. Now, you say you didn't make any statement to the effect that it isn't right to be sent outside the borders of the United

(Testimony of Friedrich Walter Bergmann.)

States to fight under a foreign flag, that you didn't make it in that form?

The Witness: I did not, your Honor.

The Court: I read this statement then. I am showing you the paragraph at the bottom of Page 5.

The Witness: Yes. [534]

The Court: You made a modification of the statement here, see?

The Witness: Yes.

The Court: Start right there and tell me why you put those words "Outside of the United States" and put that modification in there if, as you say, you didn't make the statement that it is wrong to be sent out of the United States?

The Witness: "If the law so required, I would fight against the Germans, but would prefer a non-combatant service."

The Court: All right; that is the way it read at first. Now read what you wrote in there when you corrected it.

The Witness: I did not write it.

The Court: You asked to have it corrected? You initialed it.

The Witness: Let's see. "I would fight against the Germans but would prefer a non-combatant service outside the U. S., but if U. S. attacked by any, I would fight."

The Court: I will tell you what it says. Before you had it corrected it read, "I would fight against the Germans but would prefer a non-combatant service." That is the way it read, and there was a period

(Testimony of Friedrich Walter Bergmann.)

there; then you put in—then there was added to this, "outside the U. S. but if U. S. attacked by any, I would fight."

Those are your initials?

The Witness: Yes, that is my initials, correct.

[535]

The Court: All right. Did you ask that that change be made?

The Witness: I meant I hoped I would not have to fight against Germany, but if the law says it is necessary, as I have stated already in my declaration, that is, in my naturalization papers, I will do so any time they want me wherever the United States flag flies.

The Court: I see. All right.

Q. By Mr. Jacobson: Do you remember Mrs. Thiessen on the witness stand? A. Yes.

Q. She said substantially this: That you said that you were some day going back to Germany and that she said if you do that they will take your money away? A. Yes.

Q. To which you replied, "Germany could do worse than take my money." Do you remember that? A. Yes, I remember that.

Q. Now, you explained to her—did you say that? "Germany could do worse than take my money"?

A. Yes.

Q. Did you add anything to that statement?

A. Yes.

Q. In speaking to her?

(Testimony of Friedrich Walter Bergmann.)

A. That they also could put me in prison because I evaded military service. [536]

Q. That is what you meant when you said, "Germany could do worse than take my money"?

A. Yes, sir.

Q. Do you remember Alec Posey testifying?

A. Yes.

Q. One of the statements he made was, "Hitler is all right. He is more capable of running the government than the way our government functions at this time."

Did you say that? A. Yes, I did.

Q. Did you say anything about the efficiency of a dictatorship to him?

A. I said to him because I believe and I think many Americans have been of the same opinion——

Q. Just a minute. Just what you said to Mr. Posey.

A. What I said was this: I said, "Mr. Posey, dictatorship has more efficient government and laws than a democracy but I am willing to pay the price for a democracy."

Q. Now then, Mr. Bergmann——

Mr. Dean: Excuse me just a moment. I think Mr. Bergmann was going to complete a sentence here and was interrupted, which, I think, was in response to your question. I am going to ask the reporter to read it and ask that Mr. Bergmann finish the sentence, your Honor.

Mr. Jacobson: What sentence is that?

Mr. Dean: It was just prior to your last question. [537]

(Testimony of Friedrich Walter Bergmann.)

Mr. Jacobson: All right.

(The record in question was read by the reporter.)

Mr. Dean: I ask that Mr. Bergmann finish that sentence.

The Court: Were you intending to add something to that or not? We don't know your thoughts.

The Witness: I told Mr. Posey when we talked about the difference in governments, that I believed a dictatorship is more efficient in regard to laws and organization than a democracy but I am willing to pay the price.

The Court: I see; you have already told us that.

The Witness: That is really what I meant.

The Court: All right.

Q. By Mr. Jacobson: Mr. Posey stated that you said to him, "If Hitler would come over here he would show us how to run the government."

Did you say that to Mr. Posey?

A. I positively did not say that.

Q. Did you tell Mr. Posey that you would return to Germany when the war was over and live like a white man?

A. I never said that, but I know for sure Mr. Posey asked me if I still had a father and mother and I said Yes, and I said, "That is what I am going to do after the war is over, go see my mother."

Q. Do you remember Mr. Coleman being on the stand? A. Yes.

Q. Do you remember he testified that when he was talking [538] to you one day you said to him,

(Testimony of Friedrich Walter Bergmann.)

"This God damn religion will have to go"? Do you remember him saying that?

A. That is untrue.

Q. You did not say that?

A. I never have said it.

Q. Now, when Mr. Vern Graham, the police officer, was on the stand he mentioned a conversation after you were sued. That was in July sometime of this year. Do you remember that?

A. Yes, I remember. July, yes.

Q. Did Mr. Graham come to see you after you were sued? A. Yes, he came to my place.

Q. When was that?

A. That was the beginning of August—the middle of August, the 10th of August, I would say, the 10th or 15th of August, and another time at the beginning of September, the early part of September.

Q. Was there any business transaction discussed in the conversation?

A. Yes, there was. He came to me and said, "Walter, I notice you look a little worried."

I said, "Who wouldn't be in these days when you are accused wrongly?"

He said, "Well, listen, Tarzan—" he called me by my nickname, put his two hands on top of my shoulders and said, "Now, be a man and forget the trouble and fight like you [539] should fight."

He said, "I came this morning to see you about something private, Walter." And so he said he would like to have a loan of $500 which he would secure to me by a note payable in either 60 days or

(Testimony of Friedrich Walter Bergmann.)

90 days, which ever way I wanted it, with 6 per cent interest. So I said to him, "What did you do with your $6000? You sold your property and your house?"

He said, "Yes, but I invested it in something else and I can't get it out of that. I just want a temporary loan. Will you do me that favor?"

I said, "My friend, I am sorry but in these troublesome time I do not feel like loaning my money out."

"Well," he said, "You are not sore, are you?"

I said, "Why should I be sore?" That is all I told him.

Q. Was that request for a loan repeated in the September conversation?

A. In September he came again to see me and he talked how I felt first about everything and whether I thought I would win and other witnesses that I had. I did not give him the names of any other witnesses but he said, "Well, if I can be of any use to you, I will be glad maybe to appear for you." Then he said, "I will tell you, Walter, this old question that came up before, I want to ask you once more, could you do it for 30 days? I will sign a note for $500 and I would be glad to pay you back in 30 days."

Q. Well, did you lend him the money? [540]

A. I did not lend him the money.

Q. Now, he testified that some time before this trial started—I think it was a month or two ago——

A. Yes.

(Testimony of Friedrich Walter Bergmann.)

Q. ——that you came to him and said, "Please forget everything I have told you except that I wanted to see my mother after the war."

Did you ask him to say that?

A. Never one word.

Mr. Jacobson: That is all.

Cross Examination

By Mr. Dean:

Q. Mr. Bergmann, during this cross examination in order to expedite matters, it may be that I will ask you to answer certain questions yes or no.

A. All right.

Q. And I want you to know if you feel that is not an adequate answer that I would like to have you ask the Court to elaborate upon it.

A. All right.

Q. I am doing it solely because I think it may save time.

With reference to your collection of specimens—— A. Yes.

Q. ——I assume you consider them very valuable. Is that right? [541]

A. You cannot say "very valuable."

Q. At least they are valuable, at any rate?

A. They are valuable, but that means nothing if you don't state the figure, of course.

Q. Now, you made your last trip in 1934 to the South Sea Islands?

A. Yes, French Oceania and the British Cook Islands.

(Testimony of Friedrich Walter Bergmann.)

Q. Was it your intention at that time to leave by gift this collection to any public institution?

A. Exactly. That was my intention, that is, not directly as a bequeath. I figured first they might purchase part of the collection. And then later on when I realized the courtesy shown and the love of my country—I had succeeded in real estate and oil matters—I made a bequeath in my will every second of January since 1937, not before.

Q. Would you mind telling us what your disposition was in the will, Mr. Bergmann?

A. My holographic will? I have a copy of the will.

Q. With respect to the specimens, that is all.

A. Regarding just the specimens?

Q. That is right.

A. I made a will to the museum in case I should die—that is, after my death now—that the collection will be donated to the Los Angeles County Museum. But also there is a clause in that will that should the City of Long Beach purchase property down around the City Hall—what we call, [542] oh, it is a certain block there——

Q. That you would leave it with the City of Long Beach?

A. Yes, within ten years, a stated time, I would give them to the City of Long Beach. However, if they did not have a museum—I mean the ground purchased for that purpose, for a museum, then it shall be donated back again to the Los Angeles County Museum.

(Testimony of Friedrich Walter Bergmann.)

Q. I think you have answered my question, Mr. Bergmann. If you want to elaborate later on, you ask the Court for permission to do it.

When did you draw up that holographic will? Do you recall?

A. Every second day of every year since 1937.

Q. The first time was in 1937?

A. '37, '38, '39, '40, '41, and then this time in '42.

Q. I see.

You have stated, and other witnesses have stated, I believe, that it has been your intention to leave other property, without going into detail, to the City of Long Beach?

A. Exactly, to the YMCA and also to the Salvation Army.

Q. I see; thank you.

Mr. Bergmann, I show you what purports to be a letter addressed to Mr. Roland J. McKinney, Director in Charge of the Los Angeles Museum.

A. Yes, sir. [543]

Q. The signature at the end of this letter is your signature, is it?

A. Yes. I have a copy of this letter.

Mr. Dean: I will offer this for identification at this time, your Honor.

The Clerk: Government's Exhibit 4 for identification.

(The document referred to was marked as Government's Exhibit No. 4 for identification.)

(Testimony of Friedrich Walter Bergmann.)

Q. By Mr. Dean: Now, Mr. Bergmann, with respect to your citizenship papers and your application—— A. Yes.

Q. ——some time prior to 1937 you knew, of course, that the acquisition of those papers would be of assistance to you in the conduct of your various business activities, did you not?

A. That is what papers do you refer to?

Q. Both papers, the preliminary and the final.

A. Yes.

Q. In other words, you knew at the time you obtained your final citizenship papers——

A. In 1937 that was.

Q. ——that they would be of assistance to you in the conduct of your various business activities. Isn't that correct?

A. Not only business activities. You refer strictly to business matters? You do not mention at this time about my [544] liking for the country and for the people?

Q. Just a moment. I think you have answered my question. I didn't ask you if that was the only reason, but whether or not you knew at that time that they would assist you in the conduct of your business activities.

A. I have a civic minded intentions, too, like the museum. Either they were on a business proposition like I have made while I was alive——

Q. Well, I think you have answered my question, Mr. Bergmann.

Now, as a matter of fact, during your last trip

(Testimony of Friedrich Walter Bergmann.)
in 1934 to the South Sea Islands you found that persons who were American citizens received many more courtesies in the Islands than those who were German citizens; isn't that right?

A. No, not only American citizens. There were English people that received just as many courtesies, but I did not get quite the courteous attention because I happen to come from Germany originally.

Q. You knew the acquisition of citizenship papers, should you ever return to the South Seas, would assist you in making these archeological and ethnological explorations? A. Not wholly.

Q. In part?

A. In part. I went down to the South Seas more for pleasure. I didn't go from a business standpoint. It was on account of fate or circumstances that I found those things. [545]

Q. I think you have answered my question, Mr. Bergmann.

Now, you heard Mr. Williams of the Bank of America—not Mr. Williams, but Mr. Geiselman, whom you called as a witness in your defense, testify that you told him that you had had difficulty down there in 1934 with the officials of the island because of the fact that you were a German citizen. Isn't that correct?

A. To a certain extent, not only on account of the German nationality, but because you are there as a stranger, whatever country you come from, either as an Englishman or as an American. You

(Testimony of Friedrich Walter Bergmann.)

find art *effects* and specimens of pre-historic times. Those are things that go to their own museum and there is a jealousness there whether you are American or English or any other nationality. It wouldn't make much difference. The feeling is there. They have a museum and they hate to have strangers who just come there for six months or a year take out those things, take them away to other parts of the world.

Q. But you don't recall then telling Mr. Geiselman that your work was made more difficult down there because you were a German citizen rather than an American citizen, as distinguished from a person of German extraction, German blood?

A. I cannot remember the conversation I had about this point.

Q. I think you have answered my question. Thank you.

Now, during the course of the direct examination you [546] testified as to certain negotiations with Mr. Graham of the Long Beach police department? A. Yes.

Q. And if I am not mistaken, Mr. Bergmann, you said Mr. Graham approached you after the filing of this action with respect to making a certain loan. Is that right?

A. Yes. It was about August—between August 10th and 15th, and the second time was about the beginning of September.

Q. You are reasonably certain that it wasn't before August of 1942?

(Testimony of Friedrich Walter Bergmann.)

A. I am sure; indeed I am.

Q. And, of course, Mr. Graham did not ask to borrow money before that time from you?

A. He has consulted me many times about investing this money.

Q. But not to borrow money?

A. But not to borrow money. That is what I tell you.

Q. Thank you.

You didn't know, then, Mr. Bergmann, that Mr. Graham had signed a statement and had given it to the FBI in April of 1937——

Mr. Howser: May it please the Court, that assumes a fact not in evidence and we object to it.

The Witness: What was your question.

Mr. Dean: Strike the question and I will start over. [547]

Q. You didn't know then at that time that Mr. Graham had signed a statement containing the facts which he testified to here and given it to the FBI in April of 1942? A. I did not.

Q. Four months prior to the time he tried to obtain the loan from you? A. I did not.

Q. Now, did you have any discussion with Mr. Graham in October of 1941, or at any other time concerning how you felt about the acquisition of your citizenship papers?

A. With Mr. Graham?

Q. Yes.

A. I never have talked to him about my citizenship papers, how I felt, never have.

(Testimony of Friedrich Walter Bergmann.)

Q. Favorably or unfavorably?

A. I told him once—pardon me, please. You say Mr. Graham?

Q. Mr. Graham.

A. Yes. He knew that I was an American citizen.

Q. Just a moment. Did you have any conversation with him about it, about your citizenship papers at any time? A. I do not remember.

Q. Then it isn't a fact that in October of 1941 you told Mr. Graham, "I have got my citizenship papers because it is good business and necessary for me to carry on my work." You don't recall saying that? [548]

A. I never have made a statement like that, never.

Q. Then I take it also, Mr. Bergmann, that in August of 1942 you did not tell Mr. Graham when he asked you if you were worried about these cancellation proceedings that had been instituted, "I don't give a damn if they do or if they don't. Walter has been wise enough to send enough securities to Germany to take care of Walter as long as he lives."

Did you ever make that statement?

A. I never made that statement.

Q. Now, with respect to Mr. Beck, the solicitor for the YMCA, who visited your home, you stated, I believe—and you correct me if I am wrong, Mr. Bergmann—on direct examination that your preliminary conversation with Mr. Beck concerned a

(Testimony of Friedrich Walter Bergmann.)

union of the British Empire with the United States. Is that correct?

A. Part of the talk about international politics included the union of the English people and the American people which he commenced, because he was from Denmark. He was born in Denmark.

Q. I think you told us that, Mr. Bergmann.

A. All right.

Q. The conversation lasted a considerable length of time did it?

A. I would say about 10 minutes, 15 minutes.

Q. No longer than that? [549]

A. I am satisfied.

Q. Then you don't recall having any discussion with Mr. Graham concerning the lend lease program?

A. Mr. Graham? Mr. Beck, you mean?

Q. I meant to say Mr. Beck. I am sorry.

A. No, I never talked about the lend lease, so far as I remember, at that time because there was Mr. Beck and Mr. Hoffman and whoever the other two parties are.

Q. Then I take it you didn't discuss the shipment of supplies to Great Britain by the United States on that occasion with Mr. Beck?

A. We might have talked about many things. In 10 or 15 minutes we might have talked about the lend lease. It could have been possible but they came there, of course, for another reason.

Q. Yes, I understand, but you were fairly cer-

(Testimony of Friedrich Walter Bergmann.)

tain yesterday, Mr. Bergmann, that you discussed a common union of the English speaking people?

A. We talked about the English nations in general. We talked about a union of the English nations.

Q. Yes, I understand that. I am not asking you that now. But you are certain, are you not, that you talked to Mr. Beck about a possible union of the British Empire with the United States?

A. I know positively because I am for that myself for the English talking people. We agreed to that okay. [550]

Q. But you are not certain as to whether you talked about lend lease or the shipment of supplies to Great Britain?

A. I am not quite certain, no.

Q. Isn't it a fact, Mr. Bergmann——

A. Because one thing is different from the other. I didn't want to have aristocracy included in our American democracy. That was the main point in the union of the English people.

Q. In other words, isn't it a fact that you made the following statement which I am going to quote to you after a discussion of the lend lease program and the shipment of supplies to Great Britain by the United States: "I am ashamed of being an American citizen and feel like having my citizenship papers canceled"?

A. I never have said that. I have said I would be glad to see my United States citizenship papers

(Testimony of Friedrich Walter Bergmann.)

torn to pieces if I should ever accept Mr. Smith as Baron Smith on Main Street.

The Court: Who was contemplating that?

The Witness: We talked about it.

The Court: Who in the United States has publicly advocated any such thing?

The Witness: Well, we talked about union and, of course, naturally, the British Empire has aristocracy.

The Court: Who has advocated that? Your counsel has brought in a book, Streit's Union Now. Did you ever read it? [551]

The Witness: No.

The Court: He is the greatest advocate of union. Did you ever find anything there about unions to give up your own government and to kowtow to British aristocracy? Who brought up the subject? Who has ever advocated that since the Tories before the Revolutionary War? Who has ever advocated any such union?

The Witness: We wanted our union here in our country. That is where we got our United States. It started in the 18th Century.

The Court: What made you talk about aristocracy? Who advocated that? Did Mr. Beck say he was in favor of union with the British Isles?

The Witness: He was in favor as the British are today with all their people in the different classes they have, and I didn't believe in that either. I believe we should have a democracy.

The Court: Haven't you got all mixed up about

(Testimony of Friedrich Walter Bergmann.)

the titles? Isn't Canada a part of the British Empire?

The Witness: It is.

The Court: It is a part of the Commonwealth of nations, as they call it.

The Witness: That is true.

The Court: Is there any titled aristocracy in Canada?

The Witness: No.

The Court: Who advocated bringing titled aristocracy [552] to the United States?

The Witness: It was Mr. Beck, if I remember right.

The Court: He brought it up?

The Witness: We were talking general and I think it was him who brought up about titled persons and I was not of that opinion.

The Court: He was in favor of titled persons. Is that the idea?

The Witness: He figured the way the British classes are today with their different classes, what they would be acceptable to him.

The Court: Don't you know the Constitution of the United States would have to be changed and that that could only be done by having a constitutional amendment submitted by the Congress of the United States and adopted by three-fourths of the States?

The Witness: I understand that, but I understood him in that regard that he accepted them as

(Testimony of Friedrich Walter Bergmann.)

they are right today, titled as they are in England.

The Court: You wanted to be sure you wouldn't have to address anybody other than "Mister", is that the idea? You wanted to make sure you would never be compelled to call a man "My Lord", but just call him "Mister"?

The Witness: Not always. If a man earns a professional title, that is different; but in the ordinary way, I would hate to call a man "Baron" just because he was born in that [553] class. If he has a profession, if he is a doctor, then that is a title that he earns and he could be called accordingly.

The Court: All right.

Q. By Mr. Dean: Now, Mr. Bergmann, you discussed, of course, the lend lease program with a good many people, did you not?

A. I might have talked about it with a few people.

Q. And you heard Mr. Huggins testify on the stand that had you known about lend lease at the time you took your citizenship papers out that you would not have taken them out, and that that conversation occurred in 1941?

A. I never have said that to Mr. Huggins.

Q. It is possible that you might have talked about lend lease with Mr. Huggins though?

A. I have talked to him in this regard: I believe these British dominions, Bermuda, Jamaica, the Bahama Islands all should belong to the United

(Testimony of Friedrich Walter Bergmann.)

States. I got a letter from Mr. Reynolds which I have given to my lawyers. My lawyers have the envelope here and you can ascertain there that it says we should secure those places as security for our country. That is, we would loan out money—it is really lend lease, I guess—but we should get security for that money and I believe these colonies should belong to this country because it is on this continent.

Q. Now, you have stated, Mr. Bergmann, if I am not [554] mistaken, and witnesses have appeared in your behalf and have stated that at certain times, at least, you admired the program of Adolf Hitler for building up the health of the German youth. Is that correct?

A. Yes, indeed, that is correct.

Q. Now, you heard Mr. Geiselman, a witness in your behalf, testify here yesterday, I believe, that he had a conversation with you early in 1940.

A. Yes.

Q. And at that time you expressed admiration for the health program for the German youth sponsored by Adolf Hitler.

Did you have such a conversation in 1940 with Mr. Geiselman on that subject?

A. In 1940, it could have been.

Q. And, of course——

A. It is the Youth movement in Germany, I believe, that was a good point, but not at that time, because afterwards I changed my mind.

Q. Just a minute. You knew, of course, in the

(Testimony of Friedrich Walter Bergmann.)

early part of 1940 that Germany was at war with Great Britain, did you not?

A. Yes, but I also disliked Hitler at that time. I sure did.

Q. And you knew, of course, that at that time Germany had marched into Poland and that thousands of German youths [555] were being used in that campaign? A. Yes.

Q. And that nevertheless, despite that fact, in 1940 you admired the Hitler program for building up the health of the German youth. Is that right?

A. The method of the program was all right, but then he took them for military purposes. What he did good with the left hand, he destroyed with the right hand. I did not consider this to be entirely correct because I have changed my mind. I changed my mind back in 1937 or '38 about Hitler's method when I realized what he was doing. He started good with his left hand, what he did there with the youth, like the Boy Scouts, he destroyed with the right hand because he made soldiers of the boys.

Q. Yes; I think you expressed that opinion before.

Now, with respect to Adolf Hitler, Mr. Bergmann, do you deny at this time that you told Mr. Graham, the member of the police force in Long Beach, that "Hitler is the greatest living human on the face of the earth," in October of 1941? Do you deny you said that? A. I do deny it.

(Testimony of Friedrich Walter Bergmann.)

Q. Have you ever had any conversation concerning Adolf Hitler with Mr. Graham?

A. I might have, yes.

Q. Perhaps on numerous occasions?

A. But he should have known—— [556]

Q. Just a moment. Perhaps on many occasions?

A. On many occasions, yes, I could say that.

Q. You don't recall the specific words you said on all of these occasions, do you?

A. I can mention the same thing, because the same point was always expressed. I acknowledged the youth movement in Germany was good for the boys and girls, to keep away from liquor and tobacco and otherwise, but after they received good bodies, they were then taken into the military machine.

Q. You don't recall telling Mr. Graham at any time then that Adolf Hitler was a genius?

A. Not a genius. I never used that word to anyone. I never have used that word.

Q. Now, you heard Mr. Williams of the Bank of America testify here, did you not, Mr. Bergmann? A. Yes.

Q. And you recall he said that you said that Hitler was a kind, Christian gentleman. Did you tell Mr. Williams that?

A. I did not tell him that.

Q. Did you have a conversation concerning Adolf Hitler with him?

A. I said to him I think that Hitler thinks

(Testimony of Friedrich Walter Bergmann.)
himself he is a Christian man. I didn't use the word "kind" because he is a fanatic.

Q. I think you have answered my question. [557]

A. Okay.

Q. Now, you recall that Mrs. Kinder took the stand yesterday or the day before? A. Yes.

Q. And that she said that you had told her that you wanted to return to Germany and help Hitler win the war. Now, do you deny that you made that statement to Mrs. Kinder?

A. I do. I deny that. It is not true.

Q. Now, you also saw Mr. Posey take the stand and heard him state that you during a three or four month period called yourself "Hitler, Jr.," and sometimes "Hitler the 2nd."

Now, did you ever use that expression, Mr. Bergmann? A. I never have.

Q. Did you ever call anyone else "Hitler, Jr." or "Hitler the 2nd," to Mr. Posey?

A. I never have. I never have used these expressions.

Q. With reference to yourself or anyone else?

A. I never have said that in reference to myself, I can assure you.

Q. Now, with reference to Mr. Shields and Mr. Williams and Mr. Haschkae, you heard them testify, did you not, Mr. Bergmann? A. Yes.

Q. Who said, I believe, that at the conclusion of their conversations with you, you said, "Heil Hitler." Do you [558] deny that you used that expression?

(Testimony of Friedrich Walter Bergmann.)

A. I used the expression "Heil Hitler" just in a joking way like they would say "Hello, Dutchman," or "Hello, Tarzan," in a joking way.

Q. As you explained before?

A. Yes, as I explained yesterday.

Q. Now, you heard Mr. Shields testify that when you said "Heil Hitler" that you snapped to attention, clicked your heels and had a very sober expression on your face?"

A. I never have done that. You know what I said yesterday, and that is not true.

Q. That is not true? A. No.

Q. Do you recall making a statement to anybody that "if Hitler needs what I have got, I will give him everything I own"? Do you recall having made that statement to anybody?

A. I never have.

Q. Now, Mr. Bergmann, you have stated on direct examination this morning that you admired, if I am not mistaken—you correct me if I am wrong—that you admired the efficiency of the German government and Adolf Hitler at one time or another. Is that correct?

A. I did not say "German government." I said a dictatorship in comparison to democracy, they are more efficient in regard to their methods, in their laws; that is more [559] efficient in that spirit, more economical from that standpoint, I would say, but I am willing to pay the price for a democracy because here we have freedom of

(Testimony of Friedrich Walter Bergmann.)
action that we haven't got in—like it is in a dictatorship.

Q. You have expressed that before, haven't you?

A. Yes.

Q. Now, I am not asking you—and I want you to understand this, Mr. Bergmann, whether or not you at any time have wanted Adolf Hitler and the leaders of the German Reich to set up a dictatorship in the United States. I am not asking you that. A. Never. All right.

Q. What I am asking you is this: Have you, since 1934 ever wanted the people of the United States to set up a dictatorship?

A. Never, never.

Q. Even though——

A. Because I have strong republican ideas.

Q. And you have always felt that way?

A. I have always felt that way, yes.

Q. What price do you think we pay, Mr. Bergmann, for having a democracy here?

A. We have liberty of action in speech and assembly.

Q. Yes, but what price do we have to pay for having it? A. The price?

Q. Sacrifice in efficiency? What price do we pay? [560]

A. Because everyone leads his own life in the way he thinks as an individual person.

Q. Is that what you call paying a price?

A. Not a price, no, but then in case of duty we know we shall vote and we shall give to our

(Testimony of Friedrich Walter Bergmann.)

institutions, charities, and we shall fight for our country, shed our blood in case we are attacked, which means war. I think that is a price that any patriotic citizen should show in his allegiance to the flag of his country.

Q. Now, with respect to the lend lease program, Mr. Bergmann, it is true of course, that, like a good many patriotic American citizens, you opposed that program. Isn't that right?

A. Yes, I did. I believe we should have security for it, just like Mr. Wheeler and Mr. Reynolds expressed in government printed pamphlets. I have the envelopes here of some, and I suppose the other ones are in the City Hall. I believe in acquiring the British colonies in securing our loans.

Q. Well, isn't the fact, Mr. Bergmann, that you opposed lend lease because the lend lease program was going to interfere with the conduct of the war effort by the German government?

A. Not a bit. I never have. I never have interfered. I do not know what you mean by that word "interfere".

Q. Hamper. [561]

A. I understand, but not in this way. I believe lend lease would be a good thing if we got security for it, because I believe we should do away with the dictators of Europe.

Q. But you knew, of course, at that time when you were opposed to lend lease that it was going to make the conduct of the war by Germany more difficult?

(Testimony of Friedrich Walter Bergmann.)

A. It doesn't make any difference. I am through with Germany. I haven't been in Germany for 30 years. I have nobody there except my mother. What interest should I have in Germany? Wouldn't I have been a member of the German Bund if I had any interest in Germany?

The Court: That is making a speech, not answering counsel's question.

Q. By Mr. Dean: You recall that you told Mr. Casey and Mr. Gibbons in April, I think it was, 1942, or May perhaps—— A. Yes.

Q. ——that a representative of the German government or a person who represented himself to be a representative of the German government, or of an agency of the German government, had approached you in 1937 and had asked you to make a record of the ships that entered and left Los Angeles Harbor. Now, you recall making such a statement to Mr. Casey, do you not?

A. I never have made a statement like that. I made the statement I said yesterday, that a man six feet or six feet, [562] two called on me in 1937 and that man——

The Court: Let's go over that again. These matters were gone into so fully yesterday. What he is asking you now can be answered yes or no because you have already explained the other.

The Witness: It is not a man from the German government. He only mentioned his name. That was all he did.

Q. By Mr. Dean: Now, Mr. Bergmann, it is

(Testimony of Friedrich Walter Bergmann.)

true, as a matter of fact, when that man came—that is that you told Mr. Casey that when he came that he seemed to know all about your family in Germany?

A. None whatever. He didn't know anything about Germany. He said certain German interests had high regard for me in Los Angeles. I knew right away he was lying.

Q. You have answered my question.

A. Okay.

Q. Now, it is a fact, is it not, that you never reported that incident to any agency of the United States government?

A. Because I did not know——

Q. Just a moment. Just answer the question yes or no.

A. I can't answer that question yes or no.

The Court: Just a minute. You may answer and then give your reason. You either did or you didn't, Mr. Bergmann. Then you can give your reason why you didn't report it if you didn't. [563]

The Witness: No, because the reason I didn't is on account of the fact this man only mentioned his name—and I have forgotten it, I am sorry to say—and when I realized that he said German interests in Los Angeles had high regard for me I knew he was lying. I had nobody there. [564]

The Court: Just a minute. That isn't a part of the answer or explanation. You have given your reasons.

The Witness: I did not know if this man was

(Testimony of Friedrich Walter Bergmann.)

a man working for the German government or not, or whether he was a man who wanted to approach me from a smuggling standpoint.

Q. By Mr. Dean: In other words, you didn't know whether or not he was an agent of the German government? A. What?

Q. You didn't know whether he was an agent of the German government or not, did you?

A. I had never met the man before. How could I know? What could I expect.

Q. Just answer my question now. I am just asking what your state of mind was in 1937. You were not certain when that man came to you—you didn't know positively he was not an agent of the German government?

A. If I was positive, I would have reported it.

Q. But you were not sure he was not. Isn't that correct?

A. I can't understand that question. He was not what?

Q. You were not positive in 1937 that that man was not an agent of the German government, were you?

A. Well, I had never met the man before so I don't know what he represented. I know——

Q. I think you have answered my question, Mr. Bergmann.

The Court: I want to come back to this statement here [565] for a moment in view of the witness' statement that he didn't make a certain declaration occurring here.

(Testimony of Friedrich Walter Bergmann.)

I think a while ago you didn't make this statement: "It is not correct to be sent outside the borders of the United States to fight under a foreign flag."

You say you didn't make that statement?

The Witness: That is incomplete.

The Court: You read this very carefully and had a change made. Then you notice at the top of each page after the corrections were made somebody wrote the word "approved" and then marked "for corrections" and you initialed that.

The Witness: Yes.

The Court: How does it happen you didn't have them strike that out?

The Witness: Of course, if you were there and got so many questions asked of you from one-thirty to six-thirty—well, it is just a matter of something you overlook.

The Court: Something you overlook. All right; you overlooked that. Let me ask you another question now.

The Witness: I would like to have seen the pencilled copy of it.

The Court: That is all right. Just forget that for a while. You will see it in due time.

Now, on Page 5 you made many changes. We will eliminate the changes which appear on the bottom. There were a lot of things said about Germany. You said, "It is not correct to [566] be sent outside the borders of the United States to fight under a foreign flag. I want to see the end

(Testimony of Friedrich Walter Bergmann.)
of the Hitler regime in Germany. I want to see Hitler licked but not the German people. I have a heart for the German people. There must always be a Germany. A country of eighty million people has a right to have land enough to sustain them. The colonies she once possessed were nothing but barren and desert land with the possible exception of German East Africa."

That paragraph, which is practically the entire half page, you read and made absolutely no changes at all.

The Witness: Yes.

The Court: Now, you made those statements the way they were made?

The Witness: Yes.

The Court: Then after that you began to make changes. Where it said, "Germany can never be split up," you changed to "Germany should never be split up." And then you asked to be added, "It will lead only to political unrest and war in Europe."

The Witness: Yes.

The Court: And so forth, and made other changes?

The Witness: Yes.

The Court: All right.

Now, if you say you don't believe in aggression, if you say that the white people should leave the east alone or the west alone and not colonize, how did you expect Germany to [567] be supplied with this additional Lebensraum of which you speak there?

(Testimony of Friedrich Walter Bergmann.)

The Witness: Like I have been with my brother, we had to leave Germany in order to be able to find security because it is overcrowded.

The Court: How do you expect Germany, not having any colonies, would get them except by con*test*?

The Witness: It could have been, of course, by peaceful annexation. We know Austro Hungary—why couldn't you have these different states on their own wishes through proper processes of election and decision by the majority of the people annex.

The Court: At the time you gave this—this was May 1942—you knew very well how Germany intended to get those additional colonies or room for expansion for its people, and that is by conquest and overrunning the people around them. You were still defending the right of the German people to have more room to live in.

The Witness: But not by aggression.

The Court: How were they to get them? You say they should have them. How would they get them?

The Witness: Well——

The Court: Except in the manner they did and according to their own ideas? I am trying to find out your defense of Germany's right to colonize.

The Witness: I should not have used the word "colonies," [568] I should have said "states which are closest to her border, that they by peaceful annexation be incorporated into Germany."

(Testimony of Friedrich Walter Bergmann.)

The Court: When did any nation adjoining Germany ever want to be annexed to Germany except once in the early stages after the war when there was merely a discussion of Anschluss with Austria?

The Witness: Yes.

The Court: When did any other nation before this war want to be annexed except as a result of agitation carried on by Germany to take people who had never belonged to the German Empire like the Sudetans into the German Reich? We are not talking about the past. We are talking about what you have in mind in 1942. You were still defending Germany's right to have more room for her people to develop in.

The Witness: But not by aggressive means.

The Court: At whose expense were they to get the land? Who is going to give it to them? Were we going to give them some of this land or was France or was England?

The Witness: It could have been with peaceful means, say Luxemburg, Alsace Lorraine—many people that talk the same language—Flemish. I would think the more they are split up the more trouble and political intrigue would take place.

The Court: What country in Europe is subject to colonization now when the average density of population ranges from 200 per mile to as many as 600 per mile in [569] Belgium? In what country could Germany find room in Europe to expand by colonization?

(Testimony of Friedrich Walter Bergmann.)

The Witness: It would be limited only to Austria, I think.

The Court: What country in Europe prevented any German from moving in and becoming a part of the nation and doing the things that you did in the United States? Was there any that stood in the way of Germans?

The Witness: (Pause.)

The Court: Before the war? Between the last war and this war Germans were moving freely all over the face of the earth subject to the usual restrictions against immigration which some countries had. The Germans were moving freely across the continent of Europe, could practice their business or profession anywhere, couldn't they?

The Witness: That is right.

The Court: I am just trying to find out what you had in your mind there in view of the fact that you condemn colonization, that you want the white man to leave the Orient alone. How do you reconcile that with your plea for poor Germany because she didn't get colonies that were any good? You do it in the same conversation and you do it in May of 1942, six months after we are at war with Germany, and years after Germany had indicated that the only way she intended to get room for her people, as she calls them, is by aggressive methods and by subjugating the other people to the "master [570] race".

The Witness: I do not say they are a master race.

(Testimony of Friedrich Walter Bergmann.)

The Court: I know that, but that is what Germany indicated in this war.

In May, 1942, you knew very well that she caused Japan to attack us. She had declared war on us. We were at war, yet you were still defending her "poverty" as you called it, you were still saying eighty million people have the right to have enough land and I asked you where do you think they would get the land and how could it be gotten by peaceful methods and what did you have in mind when you said that?

The Witness: I meant adjoining colonies—I shouldn't say "colonies"—but like Austria.

The Court: She already had Austria. She took it by murder and by assassination. She didn't bother with a war.

The Witness: I meant through peaceful methods.

The Court: She took it by murder and then walked in and took the rest. She got that. What else could she take?

The Witness: But not by those methods.

The Court: You disapproved of the way she did it?

The Witness: I certainly do in the strongest words.

The Court: You do?

The Witness: Yes.

The Court: What other colonies could she get?

The Witness: Not outside of Europe.

The Court: All right; let's see. Outside of Eu-

(Testimony of Friedrich Walter Bergmann.)

rope. [571] If you don't justify obtaining any colonies by England or the United States or any other nation, the Netherlands in the East Indies, how do you justify it on the grounds of necessity for Germany? "East is east and west is west and never the twain shall meet." If the east is to have what the Japanese call the new order in eastern Asia for the eastern people only, why isn't that good policy for Germany too? Why do you defend German's rights to colonize in May of this year?

The Witness: Of course, we talked more about Germany at that time because they asked me questions more about Germany. I didn't have a chance to talk much about the other parts of the world but the idea was this: The country was overpopulated.

The Court: And you believed it had a right to colonize?

The Witness: In a peaceful way, yes.

The Court: And you still believed that in 1942; that they were crowded and for that reason they should colonize.

You also said that after the war it will be the duty of every American citizen to help Germany. You didn't say "the German people".

The Witness: I meant the German people.

The Court: You used the word "Germany".

The Witness: Of course, I did not go into technicalities, but I wrote this in the spirit at that time as I thought when they asked me these questions. I meant the people. I don't care for the dictator-

(Testimony of Friedrich Walter Bergmann.)

ship of Germany. I hate the dictatorship [572] of Germany or Italy, but the people are not to blame for that. Through fate or circumstances they have to be doing what the dictators tell them to do because it is a matter of either do that or there will be trouble. They have no chance to get their rights. The German people today, I think, pray to their Father in heaven to have Hitler die this minute. I would be satisfied about that.

The Court: I see. Well, all right. I still don't know. I presume we will have to let it stand at that.

The Witness: When the gentlemen came there at one-thirty and left at six or seven o'clock, you can not expect——

The Court: Well, the question is why did you defend Germany in 1942 when you knew very well that that was the very ideology that they expressed. That is what Hitler was telling everybody. He said, "We are a have not nation and France, Britain and the United States are the have nations and we want a part of the world." Why did you defend Germany when you knew very well that that has been the explanation of Germany's warlike activities; that they are a have not nation and they want to get a part of what the "haves" have. Knowing that you repeat the same thing and say, "Yes, they ought to have colonies because there are eighty million of them and they ought to have room to live in."

That is what I am asking you. How is that con-

(Testimony of Friedrich Walter Bergmann.)

sistent unless you actually approve of the philosophy of the present Germany which you say you don't. I am trying to find out how [573] this statement is consistent if you disapprove of the present philosophy that dominates Germany, because that is exactly their philosophy. I can give you from my shelf of English translations of Hitler's speeches where the identical complaint which you thought were valid even in 1942, the identical complaints were made.

The Witness: But by peaceful means, your Honor.

The Court: You didn't limit the means there.

The Witness: Well, of course——

The Court: But you knew very well that they didn't contemplate peaceful means because of the havoc they have wrought on the world. Look what they have done all over Europe, even to Denmark who didn't resist them at all. People are starving all over Europe. The only persons eating are the Germans in Europe. They have boasted about that. Goebbels has said that. He said, "No German will starve in Europe. The other people will starve."

I am just trying to find out how you could make a defense of this character in view of your denial that you approve of Hitler except in what he has done to the German youth. How could you defend their right to colonize even in May of this year and use the identical argument which they used, saying, "We were forced into this war. The inter-

(Testimony of Friedrich Walter Bergmann.)

national bankers got us into this war. We didn't want this war. We just wanted to live. We wanted to have more space to live in. Lebensraum." That is geopolitics. You see, I [574] happen to know German, so I know the phrases that they us in the original.

The Witness: I wish I had put in by "peaceful means" because that has been my idea, not by aggressive methods.

The Court: All right; let's take a short recess now, gentlemen.

(A short recess was taken.)

The Court: Go ahead, Mr. Dean.

Q. By Mr. Dean: Mr. Bergmann, of course, it is a fact you removed your collection from the County Museum in April of 1941? A. Yes.

Mr. Dean: At this time, your Honor, I understand counsel has no objection, so I offer this in evidence as Government's exhibit next in order.

The Court: It may be received.

The Clerk: Government's Exhibit No. 4 in evidence.

(The document referred to was received in evidence and marked Government's Exhibit No. 4.)

(Testimony of Friedrich Walter Bergmann.)

GOVERNMENT'S EXHIBIT No. 4

1225 Seaside Bl.
Long Beach
June 7th, 1939

Mr. Roland J. McKinney
Director in Charge
Los Angeles Museum

Gentleman,

The writer is the owner of the Hawaiian, Tahitian, Marquesan and British Cook Island art objects, which have been exhibited in the "African Room" in your Museum since 1932 for the education and enjoyment of your patrons and comprising in all 1450 antiquities, 20 imitations and reproductions, as well as 80 ethnological objects and 38 additional rare articles from British New Guinea and Solomon Islds. or in all 1590 artifacts.

This day I have decided to offer the 3 propositions to you with the cordial request to refer my liberal terms to the proper authorities who govern the interests of your institution and to inform me of their decision by August 1st next.

The Hawaiian Collection has been valued by Mr. Hettinger, an authority of Polynesian antiquities as $6750.00 in 1932, while Dr. W. A. Bryan, who about 20 years ago was connected with the Hawaiian Bishop Museum of Honolulu, estimated the same collection from $5500.00 to $6000.00 last Feby. 28th 1934

The French Oceania Collection including the 38

(Testimony of Friedrich Walter Bergmann.)
British Island artifacts were appraised in Papeete, Tahiti by Mons. Belanger of the Paris Museum for $5200.00-5500.00.

Dr. W. A. Bryan considered the material the most valuable diversified Polynesian Collection ever brought to the Museum, excepting Hawaiian Feather work, and I dare state with great pride, that I consider the large Hawaiian calabash exhibit inside the wall showcase, the largest one in the U.S.A. and second only to the Bishop Museum.

During the 5 years of 1928-1932 in the field, I collected these 1590 objects; about 70% were found by the undersigned in the open or in caves, 20% were obtained by purchases and 10% by exchanges.

I particularly lay stress upon the great difficulty and financial loss the writer had to experience with the French officials at Tahiti, who finally agreed to release my antiquities of French Oceania, including the Marquesas, Society Islands, Tubuai and Tuamotu Groups, provided that I donate ¼th of the total quantities to the Paris Museum or as an alterate pay an export custom charge of $968.15, which equalled 20% of the custom appraisal for the combined French antiquities.

I also can state, that since 1932 in Hawaii special permission is required from the Territorial officials to export to the mainland of U. S. A. or foreign destinations, any Polynesian articles older than 100 years.

These 3 propositions I will offer to the Museum:

1) The total valuation, as per the previous

(Testimony of Friedrich Walter Bergmann.)

itemized appraisals referred to in this letter is $11600.00 and I will donate to your Museum from said sum, a value of $4600.00 provided that the balance of $7000.00 is paid in Cash to me by Aug. 1st next.

2) I will donate a value of $4100.00 from the $11600.00, which leaves a balance of $7500.00 and due me in 10 yearly installments of $750.00 each with the proviso, that each year the Museum authorities (with my permission) may remove sufficient objects representing in value said yearly payment for $750.00 for exchange purposes of any kind of Museum material with private individuals or other institutions. This clause, I believe is advantageous, as I possess letters, dated March 12th 1934 from the Field Museum in Chicago and another letter, dated April 3rd 1934 from the Bishop Museum of Honolulu, which consider part purchases of my Polynesian antiquities.

3) I will donate $2975.00 from the $11600.00 total average valuation, which balance of $8625.00 is payable to me at rate of $575.00 yearly for 15 years, with the proviso, that the collection be kept by the Museum and that should I die during said period, any further payment automatically is voided and the whole collection is willed to the L. A. Museum.

As requested, I would feel greatly obliged to you, that a response is returned to me by next August

(Testimony of Friedrich Walter Bergmann.)

1st, as I contemplate to leave overseas at end of that month.

I remain, dear Sir,

Yours very respectfully,

FRITZ WALTER BERGMANN.

[Endorsed]: Filed 11/20/42.

Q. By Mr. Dean: Now, Mr. Bergmann, you recall that Mr. Graham was on the stand.

A. Yes.

Q. And stated he had a conversation with you after Pearl Harbor, after the United States became involved in the war, at least, the United States had entered the War——

A. Yes. [575]

Q. ——with respect to the sinking of the S.S. Repulse or H.M.S. Repulse and the Prince of Wales? A. Yes.

Q. You recall having a conversation with Mr. Graham about those two ships?

A. I don't recall such a conversation.

Q. Do you recall having a conversation with anybody about the sinking of those two battle ships? A. No, I have not.

Q. Then, of course, I take it it isn't true that you said after the sinking of those two ships that it was the best news you had ever heard?

A. No, I have not said that.

Q. Now, you have stated—I am not going to

(Testimony of Friedrich Walter Bergmann.)

go into this in detail—you stated on direct examination yesterday that you did not vote in 1940 and that the reason you didn't was because you were confused by the conflicting statements between the two candidates. Is that right?

A. Exactly. I heard so much about Willkie and Roosevelt——

Q. Well,I think you have told us that already, but you, of course, didn't vote in the 1938 congressional election, did you, Mr. Bergmann?

A. I did not. That is true.

Q. And you didn't vote in the 1942 congressional election? [576]

A. I have this time, the primary and also the last election, both in this year.

Q. Of course, that was subsequent to the filing of these cancellation proceedings, isn't that right?

A. That is true, but I felt this was a different thing because I felt we needed a change in our government because Mr. Olson——

Q. I don't think we need to go into that.

A. All right.

Q. Now, of course, you being a person of German extraction, Mr. Bergmann, realize the difference between a Nazi and a German. There is a difference, is there not? A. I should say.

Q. And you agree the term "Nazi" has a political significance, do you not?

A. I would think from an organization standpoint, yes, but the German people are still the German people. How many are Nazis, I couldn't say.

(Testimony of Friedrich Walter Bergmann.)

Q. You wouldn't say all the German people are not Nazis, would you?

A. Many are not, no.

Q. You said yesterday when you were explaining one of your remarks to one of the witnesses—I think it was Mrs. Kinder or perhaps some one else who testified—that you admit you said, "I am a Nazi," but you said it in a joking way. [577]

A. I didn't say that at all to Mrs. Kinder. I think you are mistaken.

Q. I said I wasn't sure of the name, but you did say yesterday that you said you were a Nazi but you said it in a joking way.

A. I said it to Mr. Huggins' mother.

The Court: He said he made that statement to Mr. Huggins' mother.

The Witness: Mrs. Duell.

The Court: And also admitted making the statement to other people but he said he made it as a gesture.

The Witness: Pardon me. I didn't say, "I am a Nazi." I didn't say it to other people. I said, "Heil, Hitler." I think there is a confusion, please.

The Court: That is perfectly all right.

The Witness: Because the only time I have ever said, "I am a Nazi" in a joking way was to Mrs. Duell. I thought Mrs. Duell was French. Her name was French and I thought she could talk French but she could not. I said jokingly, "I am

(Testimony of Friedrich Walter Bergmann.)

a Nazi," and smiled. There is no other person I have ever said that to.

The Court: Of course, you know where the word "Nazi" comes from.

The Witness: It is a nickname.

The Court: It is not a nickname but——

The Witness: And I said that in the conversation, it was [578] in a joking way.

The Court: I asked you if you knew where the two syllables come from.

The Witness: I don't.

The Court: Do you know the name of the Hitler party?

The Witness: Well, that is all I know; Nazi party.

The Court: Do you know what the name of the Hitler Party is called in Germany?

The Witness: The National Socialist Government.

The Court: The National Socialist Party of Germany, and the word "Nazi" is merely taken from Nationalsozialistische. The first two letters "na" from "National" and "zi".

The Witness: I have never been interested in going into that. All I read was "National Socialist Party."

The Court: You also know this: That Germans who left Germany before the time of the Nazis, and even Nazis in foreign countries do not use "Heil, Hitler" as a greeting but they use the old German expression.

(Testimony of Friedrich Walter Bergmann.)

The Witness: I do not know that because I never attended any German meetings or been a member of a club.

The Court: What would you say when you greet a person that speaks the German language?

The Witness: Wie Gehts, which means "How do you do." Auf Wiedersehn, which means "Until we meet again."

The Court: All right; and when you come in in the morning you would say, "Guten Morgen."

[579]

The Witness: Yes.

The Court: Or "Guten tag".

The Witness: Yes.

But like I said before, where you say, "Hello. Tarzan," or "Heil, Hitler"—in a joking way.

The Court: What I wanted to find out is this: If you knew that both the name and manner of greeting are not used by any one except to designate belonging to the party——

The Witness: I did not know that.

The Court: You did not know that?

The Witness: I did not.

The Court: All right.

Q. By Mr. Dean: Of course, you knew the term "Nazi" was only applied to those who were members of the Nazi Party?

A. I understand.

Q. And you understood that at the time you gave this expression?

(Testimony of Friedrich Walter Bergmann.)

A. But in a joking spirit because I never met that woman more than two or three minutes.

Q. Now, Mr. Bergmann, I call your attention to page 8 of the statement, the last sentence of the first paragraph on the page wherein you state, "The Jews should be given a country which they can call their own and they should then be protected from being attacked. The Holy Land should be returned to them." A. Yes, sir. [580]

Q. Will you tell us what you mean by that?

A. I mean this way: The British really have sold out the Jews and the Jews should be protected from aggression by other nations.

Q. Just a moment. I didn't mean to interrupt you, but by the term "Jews" who do you mean, Mr. Bergmann? A. The Hebrew people.

Q. All of the Hebrew people?

A. All of the Jewish people, yes, in general. Of course, we have no Jewish nationality. They are citizens of different countries. I understand that, but if they are citizens, that is a different thing. They are then obliged to say where they belong, in their own country. But those Jews, especially in Europe where they have so many mixed nationalities and really no country. Many a Jew, I think, feels sad indeed, when he can't say, "This is my land. Here is my flag." He might still be a Jew in religion and spirit but he hasn't got the benefit of saying that he can go back to a country and say, "This is the land of the Hebrew," like the English people can say, "This is the land of the English."

(Testimony of Friedrich Walter Bergmann.)

There is an exception. We are united, a mixed people from different nations in Europe, but I think —if, for instance, I were a Jew, my brother's wife were a Jew, my grandfather a Jew, after all I would feel it is right indeed for a Jew to express himself that way even if he is a citizen now,—that it would have been better in the past. Now, I am [581] saying if the Jews could have gotten together and had their own land and started their own laws and under their own flag they would be happier.

Q. You may continue if you feel you haven't given us an adequate explanation, but I understood you to say that it would have been better had it been done.

A. In the past had it been done, yes. There then would be a land, a land of the Hebrew like in the Bible. They would get their rights and get their country back.

Q. I see.

Now, you said this did not apply to citizens of other countries. At the time you wrote this, did you have any idea that there was a large number of Jews who were not citizens of other countries?

A. Yes, I think there are many of those. That is what I meant. You have many Jews today in parts of Europe, especially in the Balkan States, who are not really citizens. They are just like a flock.

Q. Did you mean this to apply only to the Balkan States?

A. Most of the Balkan States, because that is

(Testimony of Friedrich Walter Bergmann.)

where most of the Jews are in the world today. I think in Hungary, Rumania, Bulgaria, Czechoslovakia, Poland and parts of Russia. I think in population we have more Jews, especially in Russia and Poland, who are not true nationalities on account of the mixed——

Q. I think you have answered my question, Mr. Bergmann. [582] A. O. K.

Q. There are a lot of Jews in this country who are not citizens of the United States, isn't that right? A. Yes, sir.

Q. Do you intend this should be applied to them?

A. That is, if they did not apply for American citizenship papers; if they still would be like I was prior to 1934. I was still a German subject then.

Q. I understand. I think you have answered it. In other words, it is your opinion, and it was when you wrote this that all Jewish aliens in this country should be returned to the Holy Land. Is that right?

A. Not "should be". If they wished to. That is, if they could get the same impression here now. We will say I have been in this country. We will say I am not yet an American citizen or didn't intend to become an American citizen. Maybe I have been visiting here or, whatever you want to say, been here three or four years. They don't have to apply for American citizenship, so far as I understand. They can be a resident of the country and then if they realized they could form together like

(Testimony of Friedrich Walter Bergmann.)
a union and believe in their own way, get our country to back them with the protection of Great Britain——

Q. Well, I am not interested right now in what should be done after they get back there.

A. O. K. [583]

Q. You understood, of course, when you took the oath of citizenship that the Constitution protected all aliens in this country as well as citizens, didn't you?

A. Certainly; we have the protection of the country.

Q. And at that time you felt that the Jewish aliens in this country should be returned to the Holy Land. Is that right?

Mr. Jacobson: Object to as a misstatement, your Honor.

Mr. Dean: I am not sure what it was. I just wanted to be sure.

The Court: I will sustain the objection. I think we are getting into immaterial matters.

Mr. Dean: Very well, your Honor.

The Court: Side issues. I don't want to go into side issues.

Q. By Mr. Dean: Now, Mr. Bergmann, you have stated in your written statement, and I think you did on direct examination, that following the war you intended to carry out a routine of travel every year and visit certain places. Will you answer that yes or no? A. Following the war?

Q. Yes. A. This war?

(Testimony of Friedrich Walter Bergmann.)

Q. That you expected to travel.

A. I intended to go see my mother first in Germany.

Q. That answers my question. [584]

A. Then I intended to go and spend six months on the Riviera, come back to this country and stay here two or three years and then afterwards, if my mother is alive, see her again and maybe make another trip for six months to Switzerland and then come back with my permanent residence in the United States.

Q. You stated in your statement that you expected to do that every year.

A. I didn't intend to do it every year.

Q. Not every year?

A. No, not every year.

Q. How much time would you spend on these trips abroad?

A. Maybe six months, eight months.

Q. On each trip?

A. If my mother were alive, I would say spend three or four months in Germany and three or four months in Switzerland and come back and stay two or three years here and then go back and stay in the Old Country and visit, if my mother is alive.

Q. Now, Mr. Bergmann, you heard one of the witnesses you called, I believe, or perhaps it was Mr. Kingman—— A. Yes.

Q. ——whose testimony was read into the record and whose deposition was taken; that you told him that you had a brother who was in the Mayo

(Testimony of Friedrich Walter Bergmann.)
Clinic in Rochester, Minnesota. That is not true, is it? [585]

A. That is not true. He must be mistaken, Mr. Kingman.

Q. You don't recall whether you told him that or not?

A. I am certain I could not have told him that.

Q. And, of course, you told us you never served in the German Army? A. That is correct.

Q. You heard a great many people appear here and testify that you told them that you served in the Germany Army in Turkey during the first World War.

A. I have not. I have a brother, Kurt Bergmann, who, I think, had also been in Turkey.

Q. Do you mean to say you did not tell any of these individuals——

A. Not that I had served.

Q. ——that you served in Turkey with the German Army?

A. I have never served in the German Army.

Q. Wasn't it true when you left in 1911 that you guaranteed to return to Germany? Isn't that right? A. Never.

Mr. Howser: I object to that as being immaterial, your Honor.

Mr. Dean: I will withdraw the question.

The Court: You are getting into an argument here. There are a lot of things this witness thinks is the law of Germany that I happen to know is not so; such as the statement that he was afraid of go-

(Testimony of Friedrich Walter Bergmann.)

ing back to Germany, afraid of [586] being arrested. That is not a true statement because his American citizenship protects him in that regard, and, furthermore, after you have reached military age, which is forty-five, no matter at what time you left the country, you may return despite failure to comply with military service if, in the meantime, you become a citizen of another country.

The Witness: It was prior to citizenship, I meant.

Mr. Dean: Very well.

Q. By Mr. Dean: In order to get along, Mr. Bergmann, I show you Government's Exhibit No. 1 which, of course, has been shown to you many times before.

It is correct, isn't it, that you took this document home with you and filled it out there and either mailed it or brought it in personally to the Immigration and Naturalization Service?

A. I do not think so. I think I made it out there at the time when Mr. Barber was there. I can not remember.

Q. I see. A. I can not remember.

Q. But you recall talking to Mr. Barber about it? A. Yes.

Q. Now, with reference to this answer to Question No. 26—— A. Yes.

Q. ——did you see following that question the portion that has had a line drawn through it? [587]

A. Yes, I do. I can explain that.

Q. You saw that there at that time?

(Testimony of Friedrich Walter Bergmann.)

A. Yes.

Q. I will give you a chance to explain it. But you saw that?

A. I did not see when he put it in because he went away from me for about fifteen minutes and talked to another person.

I can explain it to you this way.

Q. Let me ask you these questions first.

A. All right.

Q. It is a fact, isn't it, Mr. Bergmann, that you told Mr. Barber that you would not take up arms for the United States in an attack upon Germany?

A. I hoped I did not have to fight Germany, but when he said, "Mr. Bergmann, you can not get American citizenship with that reservation." I said—well, he came back after talking to these other men——

Q. Just a minute. Suppose you tell us exactly what you said to him and nothing else.

A. I said, "If that is the case, I will change my mind right away so I can get American citizenship." That is what I said to him because——

Q. That is enough, Mr. Bergmann.

A. I right then and there changed my mind.

Q. In other words, you state that after you told Mr. [588] Barber that, "I hope I don't have to fight against Germany",——

The Court: You are going to get into another argument now. Let the answer stand as it is. He has given an explanation. You are just starting

(Testimony of Friedrich Walter Bergmann.)

all over again. I think it is much better to let the answer stand as it is.

I am not trying to interfere with you, but it is hard for even his own counsel to confine him to one answer.

Mr. Dean: Very well, your Honor.

The Court: I will ask one question that occurs to me. Referring to this letter which was put in evidence——

The Witness: Yes.

The Court: ——that was written by you?

The Witness: That was written by me. I have the copy, yes.

The Court: By the way, it was written June 7, 1939.

The Witness: Yes.

The Court: And at the bottom you say you want an answer by August 1st as you contemplate going over seas.

The Witness: Yes, to New Zealand.

The Court: To New Zealand at the end of that month?

The Witness: Yes.

The Court: You were contemplating going to New Zealand?

The Witness: I was going to the Cook Islands, but I didn't make New Zealand. I intended to make it in 1934. After I came back from my last trip Dr. Bryan said to me, "Well, Bergmann,——"

[589]

(Testimony of Friedrich Walter Bergmann.)

The Court: Let's not get into that. I just wanted to know what they referred to.

The Witness: To my collection in New Zealand.

The Court: You were contemplating leaving overseas at the end of that month?

The Witness: Yes.

The Court: At the end of August?

The Witness: Yes.

The Court: You are sure you weren't contemplating a trip to Europe at that time?

The Witness: I did not. I intended to make another collection next to the Cook Islands. I made a Cook Island collection and I was going to make another collection.

The Court: You know, of course, that that period from June to September 1st was the critical period in Europe which culminated in the invasion of Poland on September 1st? You know that?

The Witness: Yes, I understand very well, and that is one reason why I did not go, because I thought sooner or later Great Britain might be at war and then, you see, I would have difficulty, maybe, making any exploration or doing any archaeological research work.

The Court: All right.

Mr. Dean: That is all the cross examination.

The Court: An redirect examination? [590]

Redirect Examination

By Mr. Jacobson:

Q. Mr. Bergmann, Judge Yankwich and you

(Testimony of Friedrich Walter Bergmann.)

discussed at quite considerable length this statement of yours that you felt the German people should have a place to live. Do you remember that discussion? A. Yes, I remember that.

Q. Is there any explanation you wish to make?

A. All I wish to say is what I said before. I meant prior to this war and after the last war. That is what I would like to make clear and that is why I think I have been confused.

Q. Just a minute. You spoke of after the last war about an international society having failed.

A. Yes, because the state*ment* of the world did not get together in order to stop the leaders from getting into Ethiopia—I mean the Italians.

Q. All right; but you have testified to that.

A. Yes.

Q. What I mean is, the Court——

The Court: I was trying to get an explanation. Ultimately I have to decide this case—I am the trier of facts—and it is my custom, especially when I try a case without a jury, if I think of anything that might clarify a certain topic to ask questions of witnesses. In fact, I allow jurors in my court to do the same thing. I have asked questions of [591] many witnesses here. I just wanted to clarify certain matters.

All right; if you want to ask him any more questions, it is perfectly all right. I have no objection.

Q. By Mr. Jacobson: Now, Mr. Bergmann, the part of the statement on Page 5 that was discussed was as follows: "I want to see the end of the Hitler

(Testimony of Friedrich Walter Bergmann.)
Regime in Germany. I want to see Hitler licked but not the German people. I have a heart for the German people. There must always be a Germany. A country of eighty million people has a right to have land enough to sustain them. The colonies she once possessed were nothing but barren and desert land with the possible exception of German East Africa. Germany should never be split up. It will lead only to political unrest and war in Europe."

I believe that is the part the Court questioned you about.

Were you, in making that statement, referring to what Hitler, as the head of the German government, has done by way of aggression now, or were you referring or understood Mr. Casey to refer to what you thought of the future after the war was ended?

A. Well, after the last war in 1918.

Q. All right.

After the war in 1918 you said that the statesmen had an opportunity to organize the world and you used, I think, the word "police force".

A. And they didn't do it. [592]

Q. They didn't do it so this terrible war came about. Is that right? A. Yes.

Q. All right.

Now, some day this war will be over. Is that right? A. Exactly.

Q. When you discussed that question with Mr. Casey, did you have in mind after this war ends?

A. No, before this present war.

(Testimony of Friedrich Walter Bergmann.)

Q. What was your thought on how the people of the world would get their lands?

A. By international police force, called the League of Nations or—well, like I said before; the statesmen should see to it that there would be no future war and a nation can't attack another nation which is on the defense.

Q. Now, you are talking about the future. In the past they have done the attacking, haven't they?

A. Yes. That is what I want to see prevented.

Q. And it couldn't be prevented in the past?

A. Yes, but they have not done it. They didn't show the spirit of brotherhood.

The Court: Let me help you out, Mr. Jacobson.

Mr. Jacobson: All right.

The Court: I am going to help you out by a leading question which Mr. Dean can't object to because I have a right to ask leading questions. [593]

Now, your statement is this: That whatever you said about colonies didn't refer to what Germany was doing at the present time.

The Witness: Not at present. We are at war. This is my country here.

The Court: All right. You were talking about the past; that they weren't treated right in the past by the Versailles Treaty.

The Witness: Exactly.

The Court: And that in the future they ought to be taken care of by being given colonies because they are a great people and should be given a chance to live.

(Testimony of Friedrich Walter Bergmann.)

The Witness: I wouldn't say "colonies".

The Court: Well, land.

The Witness: The others have colonies. They should have the right too. But I am against colonization myself to a certain extent. I believe the land next to Germany, if they can get it by peaceful means would be best.

The Court: They have it all, including my native country of Rumania. They got that by internal conquest. They conquered the government and took the country.

The Witness: Not after we are at war, because here as an American citizen I have to fight, and I am willing to fight for this country.

The Court: All right.

Mr. Jacobson: I am going to try again, your Honor, with [594] your consent.

The Court: I will let you ask a leading question. Go ahead.

Mr. Jacobson: I am just trying to think of the right question, your Honor.

The Court: All right; take your time.

Q. By Mr. Jacobson: Mr. Bergmann, I want to repeat. Some day the war will end, won't it?

A. Yes, and I hope very soon.

Q. And there will be a peace conference?

A. Exactly.

Q. There was one twenty-five years ago?

A. Yes.

Q. And it didn't work out so good.

(Testimony of Friedrich Walter Bergmann.)

A. Because the statesmen of the world did not get together, didn't show brotherhood.

Q. There was an idea for a League of Nations and that failed? A. Yes.

Q. So countries, including Germany, went on taking land by force. A. Exactly.

Q. Are you opposed to that?

A. I am opposed to that. I am opposed to all dictatorship by force or aggression.

Q. Now, supposing after this war there are too many [595] Rumanians for the land that comprises their historical borders. A. Yes.

Q. Do you think they should starve to death or do you think they should have an opportunity to have a place to live and work? A. Well——

Q. Now, answer yes or no; no argument.

A. Yes, because——

Q. Answer that yes or no. A. Yes.

Q. All right. This is the question I want you to answer. Are the people of Rumania to get their additional space to live in by applying to a world society that will peacefully assign them——

The Court: You are making an argument and a speech, Mr. Jacobson.

Mr. Jacobson: That is true, your Honor, but I don't know how else to do it.

The Court: You may argue that. I have tried to get him pinned down. He has told us the best he could about it.

Mr. Jacobson: All right. That is all, Mr. Bergmann.

(Testimony of Friedrich Walter Bergmann.)

The Court: Now, Mr. Bergmann, just one more minute.

If there is any fact that you want to state or any explanation that you want to give, anything additional, other than a speech, why, I will let you do it now. It isn't my custom to do it, but I think you have thought at times that [596] perhaps you may not have been able to express yourself. Yesterday you said something about wanting to say something and I said, "No". If there is any fact which you haven't given us as yet that you think ought to go into this record at this time—remember it is a fact; not an argument—you may state it now. Your counsel is very capable. I have known them for many years—not Mr. Howser so well as I know Mr. Jacobson—and he will be able to present the argument that should be presented in your behalf when the evidence is concluded.

The Witness: I wish to say——

The Court: If you have any particular fact that you want to add that hasn't been brought out, why, you may do it now.

The Witness: I have made a will since 1937 every second day of January. It is true that I wrote that letter and there is a copy actually in the hands of my lawyer dated 1939 to Mr. McKinney. I have made a will on the second of every year since 1937 until this year, 1942, and the copy of the will is in the hands of my attorney. Indirectly, the letter which you have there directed to the Los Angeles Museum would seem to conflict with the

(Testimony of Friedrich Walter Bergmann.)

terms of my will as I wanted to have it in 1937, but that was unintentional because it means only after death—that if I should die, these things would be bequeathed. I still possess them and if I could sell them or donate them, I would. [597]

The Court: In other words, you are offering that in explanation of this letter and you mean to say that while you were offering to sell them, after death you willed the collection to them.

The Witness: Yes. I made the will on the 2nd of January every year up to 1942.

The Court: But now in this letter, so long as you mention it, you notice that your first proposition is to——

The Witness: To sell the property.

The Court: ——sell it for cash.

The Witness: Yes.

The Court: And then one of your other alternatives is that you want to be paid a certain sum of money over a period of ten years at the rate of $575.00 yearly for fifteen years with the understanding that if you die in the meantime the payments would end. Is that correct?

The Witness: Yes.

The Court: But your first alternative was that you would donate out of $11,600.00, $4,600.00?

The Witness: Yes.

The Court: Why did you make that provision for payment over such a long period of time, $575.00 for fifteen years, to a public body like the museum that lives by appropriations from the

(Testimony of Friedrich Walter Bergmann.)
county and could easily pay it in one year rather than pay it in a period of years?

The Witness: No, they could not. I asked Dr. Bryan [598] before he died—he was the head of the museum for many years—and he said they had many financial difficulties and that is the very reason I made the terms extraordinary long.

The Court: I see.

You know also, of course, that if payment was made in bulk, if it was made in one lump sum you would have to pay income tax on it during the year?

The Witness: Yes.

The Court: While if you received it over a period of years only the installments would be added to your yearly income?

The Witness: Yes, but this has nothing to do with that.

The Court: That is all right. The Supreme Court says that is all right.

Is there anything else counsel want to ask of this witness?

Mr. Howser: That is all.

Mr. Dean: That is all, your Honor.

The Court: All right, step down, Mr. Bergmann.

(Witness excused.)

The Court: Have you any other witnesses?

Mr. Jacobson: No.

The Court: Have you any rebuttal?

Mr. Dean: The rebuttal is this document which

Mr. Jacobson hasn't seen which Mr. Howser has. [599]

The Court: I think there is one thing suspended in the air, gentlemen, and that is that letter of Mrs. Miller has not been offered.

The Clerk: You mean the Lottie Miller statement.

The Court: Yes, Lottie Miller.

Mr. Dean: Oh, yes, that is right.

The Court: It is up in the air. You remember she stated she didn't read it.

Mr. Dean: Yes, your Honor.

The Court: We will put that down in the book. Mr. Somers usually thinks about these things but this time I thought about it myself.

Mr. Dean: While counsel is looking——

The Court: I will tell you, gentlemen, I want to close the testimony and then I will cut into the noon hour and we will take an adjournment and then have the argument in the afternoon.

Mr. Dean: Mr. Casey, will you take the stand.

The Clerk: Does the defense rest?

Mr. Howser: Let me see that, Mr. Dean. Maybe we won't have any objection.

Mr. Dean: I thought you saw it. I am sorry.

Mr. Howser: Defense rests.

JAMES D. CASEY,

recalled as a witness by and on behalf of the Government in rebuttal, having been previously duly sworn, was examined [600] and testified as follows:

Direct Examination

By Mr. Dean:

Q. Mr. Casey, I show you Government's Exhibit 3 for identification and ask you if you have seen that before?

A. Yes, I have seen that statement before.

Q. To expedite matters, is this statement one that was signed in your presence by Mrs. Charlotte Miller who appeared in this court yesterday?

A. That is true; she signed it in my presence.

Q. Before signing it, will you tell tell us the circumstances very briefly under which she signed it, please?

A. When I first went into Mrs. Miller's residence and interrogated her about Mr. Bergmann and her associations with him, which took a period of probably twenty or twenty-five minutes, after completing the questioning, I took the appropriate part of her testimony—her statements to me and wrote them out in this statement. After writing this out—this statement was on a pad of paper—I handed it to Mrs. Miller and I said, "Please read this and if this is true and correct would you mind signing it?"

She said, "No". And she took the pad in her hand and looked it over, then she signed her name.

Q. How long did she have it in her hand before she signed it?

(Testimony of James D. Casey.)

A. Oh, I would say thirty seconds to a minute. [601]

Q. Of course, you didn't make any threats or give any promises, did you, Mr. Casey?

A. No, I didn't.

Mr. Dean: I offer this in evidence, your Honor.

Mr. Jacobson: To which we object on the ground Mrs. Miller didn't read it before signing it.

Mr. Dean: I can't prove that.

The Court: If that were true, you could never impeach a person. It is made the duty of a person to read everything they sign. This is merely offered for impeachment. It is up to the Court to determine whether the lady was correct or wasn't. Being a lady, we have to use polite words.

The objection is overruled and the weight will be determined later on.

The Clerk: 3 in evidence.

(The document referred to was marked Government's Exhibit 3, and received in evidence.)

Long Beach, California
April 20, 1942.

I, Mrs. Charlotte Miller, 49 Mariposa Ave., Long Beach, make the following statement freely and voluntarily to Special Agent James D. Casey of the Federal Bureau of Investigation. No threats or promises have been used against me.

I have known F. Walter Bergmann for about two years. In February of 1940, he told me, "I send my money back home to Germany." He has said that he owns property all over the world. I

(Testimony of James D. Casey.)

have been in Bergmann's apartment in 1940 and at that time saw German newspapers and magazines scattered about in his apartment.

I have read the above statement and it is all true.

Signed: MRS. CHARLOTTE MILLER

Witnessed: James D. Casey, Special Agent, F. B. I., Los Angeles.

[Endorsed]: Filed 11/20/42.

Cross Examination

By Mr. Howser:

Q. Mr. Casey, Government's Exhibit No. 3 contains about twelve or thirteen longhand written lines, is that right?

A. I think it is approximately that. It isn't quite one full sheet.

Q. That, as you say, was the appropriate part of a twenty-five minute conversation that you reduced to writing? A. Yes. [602]

Mr. Howser: I think that is all.

(Witness excused.)

Mr. Dean: At this time, your Honor, I offer in evidence a report made by Mr. Barber of the Department of Immigration and Naturalization Service to his superior with particular reference to notes in the upper lefthand corner following the word "see que. 26". I understand counsel have no objection to the receipt of that evidence.

Mr. Jacobson: Yes, I am, your Honor.

Mr. Howser: Just a minute.

Mr. Jacobson: I object on the ground it is hearsay.

Mr. Howser: My error, Mr. Dean.

Mr. Dean: O. K.

The Court: Are you insisting on the objection?

The Court: Let me take a look at it.

(Document passed to the Court.)

The Court: Which paragraph?

Mr. Dean: It is the upper lefthand corner, your Honor.

The Court: Well, I will tell you gentlemen, I am going to sustain the objection to this for several reasons. In the first place the witness has admitted that he made such a statement and that upon being informed by Mr. Barber that naturalization couldn't be obtained by any one who declined to fight against any country he considered the matter for fifteen minutes and then right then and there changed his mind. In view of that fact, this won't have any impeaching [603] value.

Secondly, I have had my clerk verify the fact as to whether I presided on April the 9th and he states that I did.

Mr. Dean: Your Honor, may I just state a word? I am not certain as to the state of this record with reference to that admission by the defendant. I concede, of course, if he admitted it then I will withdraw the offer.

The Court: He admitted that he was gone fifteen minutes and thought about it and when he came

back he said he changed his mind right then and there.

Defendant Bergmann: Right then changed my mind.

Mr. Dean: My understanding was that he said to Mr. Barber, "I hope I do not have to fight against Germany." That is why I was pursuing that line of examination when the Court stopped me.

The Court: All right. Just wait a minute. I think, anyway, this would merely be a memorandum, and in view of the fact I raised the question I don't want to exaggerate the importance of the fact and make the naturalization service fear that I am unduly critical of a little slip-up that may occur at any time. I stated definitely at the time that I felt a matter of this character should have been called to the attention of the Court because matters of less gravity have been placed upon the doubtful list because the examiner can do nothing but recommend. Furthermore, this is merely a memorandum and I don't think Mr. Barber needs any defense so [604] far as I am concerned. I will take his statement that he made the recommendation. I don't think he need fear that what I said might reflect on him.

Now, the only way to impeach the testimony as to what took place, is by having Mr. Barber testify —I don't think he testified before—how he happened to write those words, and those are the exact words that were given to him by the applicant.

Mr. Dean: I would like to have Mr. Barber do that.

The Court: I will sustain the objection to this because it is merely a memorandum of the conversation and the witness is available and if he needs to refresh his recollection, yes, but as primary, testimony I will disallow it.

BRUCE G. BARBER

recalled as a witness by and on behalf of the Government in rebuttal, having been previously duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Dean:

Q. Mr. Barber, directing your attention to April 9, 1937, will you tell us very briefly just what the conversation was that you had with the defendant Bergmann with respect to the answer to Question No. 26, contained in Government's Exhibit No. 1?

A. I observed these two marks, one under "defense", and one under "yes." [605]

Q. At what time did you observe them?

A. At the time I was checking the form with Mr. Bergmann, just prior to the time of the filing of the petition.

Q. In your office?

A. Yes, in the Immigration and Naturalization office.

This prompted me to make inquiry as to whether he had any mental reservations or was unwilling to take the oath without some qualification, and I then asked him if he had any religious scruples

(Testimony of Bruce G. Barber.)

about bearing arms in the defense of the United States. In fact, he said he had not. In view of these words being under there I pursued the questioning further and asked him if he had any objection to bearing arms or taking up arms in an attack upon Germany, and he then, in effect, said he wanted to add the qualification which I wrote on the form here following the word "yes."

Q. Will you tell us what that qualification is?

A. He says, "Yes. But will not take up arms in attack upon Germany."

Q. Now, what followed that?

A. I don't recall that I went out of the room. Mr. Bergmann testified I did, and that was entirely possible. Anyhow, before we concluded the interview he said that he wanted to withdraw his qualification and that he was then willing to take the oath without any qualification, particularly as to that part with reference to bearing arms.

Mr. Dean: That is all. [606]

The Court: All right; any cross examination?

Mr. Jacobson: Yes.

Cross Examination

By Mr. Jacobson:

Q. You, I presume, have interviewed a great many thousand applicants since this time, have you not? A. Yes.

Q. You heard Mr. Bergmann testify that he said he hoped he would never have to fight Germany?

A. Yes, I did.

Q. Now, would you say that he more accurately

(Testimony of Bruce G. Barber.)

stated it or that you wrote down his exact words when you wrote, "But I will not take up arms in attack upon Germany"?

A. Well, I would say that the written answer there is correct because I would ask him to sign that statement.

Q. Yes, but in making your notes and making replies, you more or less summarize an applicant's statement, do you not? You don't make a stenographic report of it, do you?

A. No, not always; but referring to that particular answer it was so different. That is why I repeat it here today that I recall the part of the conversation or a good part of it. I put down his exact words there.

Q. You are positive that he said "I will not," rather than "I hope not"?

A. I would have put down what he stated at that time.

Q. That is not then a summary but is the exact words? [607] A. Yes.

Q. Are you basing your testimony on the fact you wrote these words, or do you have any independent recollection of this particular conversation?

A. I have an independent recollection of this conversation because at the time I was considering the legal significance of the statement.

The Court: It is agreed that those words—strike that.

In whose handwriting is the sentence that is stricken out?

(Testimony of Bruce G. Barber.)

The Witness: That sentence is in my handwriting.

The Court: The word "yes" is in his handwriting?

The Witness: Yes, that is correct, your Honor. The word "yes" was written by the petitioner.

The Court: Then he, or rather, you put in the qualification when he gave it to you?

The Witness: That is right.

The Court: Then you told him that if had that reservation in there, citizenship would be denied him?

The Witness: Yes.

The Court: This is what he has testified to. You see, that is why I am asking you rather leading questions because that is what he said.

The Witness: Well, it would be to that effect, yes.

The Court: I see.

Then when he came back he told you he changed his mind. Is that the idea? [608]

The Witness: I don't recall if I left the room or not, but, at least, before we concluded the interview he told me he had changed his mind.

The Court: Then you made the memorandum in the other form that Mr. Dean offered in evidence?

The Witness: That is correct.

The Court: For your superior officer?

The Witness: That is correct.

The Court: Very well.

Mr. Jacobson: No further questions.

Mr. Dean: That is all.

(Witness excused.)

The Court: Now, let's see; did I act on that Exhibit 2?

Mr. Dean: The one that was offered, your Honor?

Mr. Jacobson: The Miller letter?

The Court: Yes.

Mr. Jacobson: I think you admitted that, your Honor.

The Clerk: That is No. 3, your Honor.

The Court: Is there any other testimony?

Mr. Dean: No further rebuttal testimony, your Honor.

The Court: All right.

I don't want to limit you as to argument, but I want the argument concluded this afternoon, gentlemen, so if you promise to conclude it this afternoon we will take the regular adjournment until 2 o'clock. I don't see any reason why, during the regular session, we can't conclude whatever [609] argument is necessary.

Mr. Dean: Mine will be very brief, your Honor.

The Court: I know you all worked hard and I don't want to work you longer hours. It is just as much of a strain on me as it is on you.

Mr. Howser: Your Honor, I would like to ask one favor of the Court. Mr. Jacobson has been carrying the greater portion and burden of this trial so we have more or less divided up our argument. I will comment upon the government's witnesses and

it is Mr. Jacobson's desire to comment upon the testimony of the defense. With your permission we would like to handle it that way. We will assure you that we will not take double time in doing so.

The Court: I have no objection to doing it in a case of this character because where the burden of trial is borne by one man, it may well be that one of the others can better express his thoughts about the matter, so long as we try to avoid too much unnecessary repetition.

All right, gentlemen, we will then take the regular recess until 2:00 o'clock.

(Whereupon, at 12:35 o'clock P. M., a recess was taken until 2:00 o'clock P. M.) [610]

Los Angeles, California,
Friday, November 20, 1942.
2:00 P. M.

The Court: All right, Mr. Dean.

(Here followed the opening argument on behalf of the government which was reported but not transcribed.)

The Court: All right, Mr. Howser.

ARGUMENT ON BEHALF OF THE DEFENDANT BERGMANN

Mr. Howser: Your Honor, Mr. Dean and Mr. Jacobson:

Mr. Jacobson and I, your Honor, have sensed the responsibility of our duty to our client in this case

exceedingly, and we have done so because we, as individuals who have been fortunate enough to be born in this country, appreciate and realize the importance of citizenship in our country. But may I say to this Court that I stand before you convicted in my own mind with the feeling, perhaps, I have been guilty of expressing myself perhaps too boldly as a citizen of this country, disrespectful to it, something that we and many of us in this country certainly have been guilty of many, many times.

Now, in the last war and in this war we, as Americans, have been swayed in our actions towards other people by a great wave of patriotism, and I say to you, your Honor, that in many cases in the true American style we have overdone it. I remember as a boy living back in Nebraska—I lived in a community surrounded by Bohemians and Germans—the German children that were born in Nebraska during the first World [611] War were ostracized and were ridiculed by the children in school who, no doubt, in my mind, got their beliefs from their parents. I will say to you that my father deemed it necessary to change the name of Howser from H-o-u-s-e-r to H-o-w-s-e-r because it appeared to be too German.

Now, we are just human beings and these witnesses that have come to this court room are just human beings and I know there are, as the Court does, certain human frailties and one of them is the tendency to be misled by that demon suspicion fired by our spirit of patriotism and our loyalty to this country. I say, Mr. Dean, that as to the witnesses

who have come here for the government there is no doubt in my mind and I am convinced that they have gone back into the recesses of their memory—no, not as American citizens did they report to the authorities these unpatriotic statements of the accused in 1937 or '38, but they spring them on us today in a time of war. There isn't a single witness that testified on behalf of the government, your Honor, who could give us a single thing as to the content of the conversation that occurred except those portions as termed by some the most important thing.

Now, the United States District Attorney—and, your Honor, I have the greatest respect and want to acknowledge and thank him for his fair and kind manner in which he has handled this case—has indicated his belief that the defendant Walter Bergman has obtained his citizenship in this [612] country only for the purpose and from the standpoint alone of his ability to acquire, to make money and, as this Court realizes, to covet that money. Bergmann to me, your Honor, can best be described as my associate has described him to me. He is an individual coming from a family whose father deserted it, and his mother has pressed into his mind only certain things and he is just like a person who is looking through a long pipe. He can see only certain things, and those things are money, self sustenance and Walter Bergmann.

I do not deny, your Honor, that we have here an individual whose apparent and only desire is to covet the dollar. He has severed his relationships with his own relations except his mother as far as

this evidence is concerned. He has disgorged himself of every pleasure in life except to covet money. He has lived like a tramp. He has severed and failed to make friends. And he has deprived himself of a wife and a home and a family as Victor Kingman has told us in his opinion—and it is my opinion, too, your Honor—to save the dollar.

Now, if those things are true—and they are uncontradicted in the evidence—and if a man's first love is acquisition, dealing in and coveting of property and if he is inclined to deprive himself of the common things of life, forego the ordinary human things just for the mental satisfaction of self-reliance, can't we then say, your Honor, loyalty to the country exists in his heart that affords to him the opportunity of obtaining those things which he covets most? [613]

We have a case here where a man has acquired a great fortune, and he has acquired it to the deprivation of his own pleasure except the mental satisfaction of self sustenance and to be independent. America gave him that opportunity, your Honor.

I would like to compare the situation with a man who is in business and who neglects his own family. And if you will permit the personal reference again, I was one of nine children in my family. My mother died when she was thirty-eight years old. I was the youngest one in the family. My father lived until he was eighty. He said to me on numerous occasions, your Honor, that the one thing that he regretted most was that he neglected, outside of the manifestation that I have referred to, to give his

wife more attention. He did not take her any place. She was dressed commonly. She was not bestowed with gifts or jewelry. But, your Honor, even though he was busy at the plow farming or in later years doing other things, he still loved my mother but he neglected her.

What proof do we have in this case that this defendant has any greater love for Germany than America? What proof do we have *the* he could build a greater fire or admiration for some other country than of America?

This brings me down to this situation, your Honor, and that is this: Walter Bergmann, the defendant in this case, if you please—excuse me for pointing at you; I don't mean it that way—can not be gauged by the same standard that [614] we can gauge, perhaps, other people in determining whether or not he is loyal or disloyal to this country. Now, in negligence cases we judge negligence by the term "ordinary, reasonable, prudent, person"; in child cases we gauge the accountability of a child by his age, his mental capacity and so forth. We can't determine the loyalty of the defendant by the standard of loyalty that is best displayed by our senator elect from Los Angeles County whom I have had the pleasure of knowing, a gentleman by his very act as chairman of the un-American activities of the State of California is constantly waving the flag. We can't gauge him by the person who loves to put on a uniform and parade. We can't judge him by, let us say, the air raid warden in a neighborhood who has the whole group in the neighborhood aroused

over this situation, meeting in his home. We have no right to gauge him by the standard of those who marched across this country and camped on the lawns of our Washington Capital. We can't gauge him by the people who have caused strikes in the defense industry in this nation.

I say to you, your Honor, we have to consider this man entirely by his own makeup. Now, the government witnesses in the greater part—and I know the Court appreciates this—are giving us statements prior to December 7, 1941.

In the case of United States vs. Schurmann, 264 Fed., 917, the Court said that the test is try out his attitude of mind and heart under conditions of 1916 and '17, under [615] conditions when men are accused of giving utterances to their resentment to others.

The government witnesses, your Honor, in the great part are aroused in my mind, as the Court said, by the fact that this man has, because of his manner of living and of treating people and his boldness become a thorn in the side of a lot of people down in my community. It is peculiar to me that all of them, save one, can remember only just a few statements that were made; and I know where partial statement or statements that are not reduced to writing at the time when the memory is fresh, that the Court will gauge the same with a great deal of caution.

Your Honor, there is no doubt in my mind when this witch hunt started—and that is just what it was—that these people reached back, as I said be-

fore, into the recesses of their minds and did the best they could to recall what was said.

There is not a single bit of evidence in this case that a single witness who has testified on behalf of the government at the time or was in a reasonable time ever reported to a single law enforcement agent in this country the statements made.

Two of them made some very damaging statements as to the defendant after Pearl Harbor, Officer Graham and this man Haschkae. I do believe it is significant that Haschkae in a public park, in Lincoln Park in Long Beach, endeavored to [616] sell the defendant a piece of property for $8,000.00 and that my fellow citizen on the Long Beach police force endeavored to float a loan. Now, these government witnesses, your Honor, have made statements, as Mr. Dean has called to your attention, to facts which have not, but to the contrary have been positively proven to be not true. One was as to the defendant's military service in Germany. Mr. Barber stated, as I recall it, on direct examination that he saw something under the word "yes" that looked to him like "no" and today Mr. Barber got on the witness stand and we called his attention to the underscoring manner in which this defendant has also put the like description under the word "defense" and then said that he had seen it under "defense" so he raised certain questions.

As to Mr. Rankin, I know your Honor is correct. The witness will never be able to satisfy himself in his own mind that you are correct, that you did not ask the questions that he said you did when

the oath was administered to this defendant. So it does show us that people do come in here conscientiously and in earnest and not give us the facts.

Now in the case of U. S. vs. DeTolna, 27 Fed. (2d) 984, in a similar proceeding there were certain things brought out that were found by the Court to be necessary to revoke citizenship. There in that case the defendant held himself out as an Austro-Hungarian in a marriage license. He bought a yacht as a Austro-Hungarian subject and registered it under the Austro-[617] Hungarian flag. He traveled around the world flying that flag and he never claimed to be an American citizen.

In the case of U. S. vs. Tapolcsany, 32 Fed. (2d) 385, the facts were that the defendant admitted that he was opposed to the present form of government in the United States and he liked Russia; and secondly, there were direct declarations by the defendant that the defendant when he sought citizenship did so with the intent of destroying the government of the United States.

In the case of U. S. vs. Kramer, 262 Fed. 395, the defendant in that case said that he would do all he could against the United States and help Germany; that he would send information to Germany about the movement of our troops here in this country and that he was going back to Germany through Mexico; that he did not want to live in this country.

In the case of U. S. vs. Wursterbarth, 249 Fed. 908, the facts in that case were that the defendant didn't like men fighting in his country; but he would do nothing to defeat Germany; that he didn't want

America to win the war; that the defendant made no attempt to explain or refute, which I think is very important.

In the case of U. S. vs. Darmer, 249 Fed. 989, the defendant was a citizen in 1882 and he said he would rather throw all his property in the bay than to buy a $50.00 bond and there was no attempt to make an explanation by the defendant, which I think is very significant. [618]

In the case of U. S. vs. Schneiderman, the defendant admitted membership in certain communistic orders.

The Court: That case is before the Supreme Court now.

Mr. Howser: That is right, it is before the Supreme Court.

The Court: We don't know what they will do with it, so disregard it.

Mr. Howser: The thing that is confusing me, your Honor, is how are we going to disseminate the evidence in this case, and how are we going to say that these people were mistaken when they said that the defendant said that he had served in the German Army and at the same time say they are speaking a truth and they are not mistaken when they repeat certain statements that he is supposed to have made.

Now, in jury cases, and particularly in criminal proceedings—and this, while it does not carry in law a penalty, is semi-criminal in my mind—there is a rule of deliberation that courts usually give juries and that is this: That where there are two reasonable hypotheses each which appear to be of equal

strength, then, as far as the jury is concerned, it is their duty to acquit in a criminal case. Your Honor, I submit to you that this record is conclusive as to a proposition that we have a man who came to this country. He has seen himself. His ability to earn money has been for himself. He didn't want money to buy nice things as other people did. But he wanted money to covet. He wanted to fondle it, we [619] might say. He wanted the mental satisfaction that he had it if the time would come that he would need it.

Now, true, he has neglected his country in that he has not done a lot of things that maybe you and I have done, but actions speak louder than words. There is nothing in the world more dear to that man, outside of his own life, than his property; and I submit to this Court that throughout the years—and it is in the record and it is there by competent people from both the government and the defense—that he wanted to leave that property to the Y.M.C.A. in Long Beach and the Y.M.C.A. in Toronto, Canada, to the Salvation Army and other properties to the City of Long Beach; that he takes his archaelogical exhibits to the museum in Los Angeles for the public's benefit. He did not get any rent out of these exhibits. It was pride. He risked his life going to the South Sea Islands robbing graves of the natives to bring back the exhibits for the education of the children of this country, your Honor, and not Germany. I say a man who loves money as well as he does, who is willing to leave it on his death to the country and in the country that he acquired it,

is showing by actions something that speaks much louder than words. I thank you.

The Court: Mr. Jacobson.

Mr. Jacobson: If your Honor please and Mr. Dean: I, of course, feel this proceeding especially keen; the youngest of six children of immigrants raised among immigrants. You had [620] to be the head of your class in school because you were an immigrant child—and generally, we were.

I heard discussions by the Schirmers and the Schultzes in my neighborhood, the Emberts, the Jacobsons, the Larsons and the Petersons, and one of the things they always talked about was the economic opportunities here. My father was an artist with jewels, and I think his salary as a master jeweler in Sweden was $6.00 a month in American money or 24 Swedish crowns which he used to explain to me was just enough the keep from starving to death. His first job in the United States paid him per week about three times as high as he had ever earned in Sweden and he was very grateful about it.

My mother had been an apprentice as a young girl to learn how to cook and she got nothing. When she got to be a good cook she got 75 cents a month and was very grateful about that.

I think the Statue of Liberty tells "You oppressed people of Europe, come to my shores," and what do you find? You find what you are looking for. But I don't believe America would be much good for anybody, I don't think it would be much good for me or anybody else if you couldn't find some form of economic opportunity. In fact, Vice-

President Wallace's great campaign is the sentry of the common man, economic freedom. He doesn't express particularly political freedom or social opportunities; he expresses how important it is to have economic freedom. Everybody gets out of life according to [621] his own inner makeup. One man becomes a violinist. Another man becomes a movie star and another man paints pictures or makes jewelry or farms. Some men care more for money than others. Some men have a better appreciation of what money is worth. There comes a time when your Honor knows and all sensible people know the law of diminishing returns applies; that you can work and get a certain salary, and an increase of ten dollars a week is practically of no importance. You can't eat any more food. You are overweight as it is. You can't wear any more shoes. But that isn't what they want. They want still more money. Hetty Green practically starved to death in New York, a native born, with millions. We have here a German born Hetty Green. He saw in America freedom of trade, economic opportunities, a kindly people that didn't exist in the country he had come from.

His life would have been tough even in the United States as a boy. His father deserted his mother and his mother took in roomers. The motivating force in that man's life is economic security.

There has been a parade of witnesses, about 34 or 35. The government has commented on the fact that we have produced 15 witnesses, outside of Mr. Bergmann, whose testimony to his loyalty is more or less of a negative nature. Well, supposing the

issue in this case was whether he is a man of good moral character. I think you will find it very difficult to find people who would talk about it because when a man is [622] of good moral character—and I know there is a case in the Supreme Court to prove that—you don't have to prove people sat down and talked about it and said, "John is a man of good moral character." The people talk about those things when they are not.

Dr. Crump, a man with three sons in the service, Mitchell Ellis, Rohrs—you have men who have known this man from anywhere from six to twenty years. The two neighbors down there, the two Irishmen, Dungen and Horan, they can't find a thing wrong. They can't find in their memory any disloyal conduct, any disloyal statements.

Now, true, they can't come into court and testify, as the government witnesses did, that they are certain today the man said that thing, but they just accept the man. The man is accepted. They do business with him. They live neighbors. They like him. And why do they like him? They like him because he has been a good neighbor. Being a good neighbor even has sanction of higher authorities in this country—the Good Neighbor Policy. It is significant to me that in all these business dealings it just isn't a question of commerce. The man was a good man to deal with, yes; and he was a good business man.

I don't believe George Trammell came in here and testified on behalf of this man after his acquaintance of many years just because Mr. Bergmann happened

to be a client of his at one time, because the relationship started when he [623] was a public official.

Geiselman, a World War officer, a former prosecuting attorney, a man high in the business professional life in Los Angeles, true, he had commercial motives too. It is pretty hard to be Simon pure in any of our relationships. Even among our best friends we get something out of them; nothing else maybe than a cup of coffee or a highball or a cigar, but relationships aren't so Simon pure and of such rare etheric density or lack of density that friendships are completely divorced from practical considerations.

You generally like a man or like a woman because they have been kind to you. Maybe they have done you a favor or sent you some business or entertained you in their home.

Now, this Mason lady is one of the first widows of this war. It is inconceivable that she would come in and testify if anything in the relationship of herself and Mr. Bergmann—they had been neighbors at one time—was such to make her believe that he was disloyal to the country for which her husband gave his life here a few months ago. I think her testimony is very important; how he had encouraged her to keep her chin up when she was a bride or young married woman and lonesome because her husband had been sent to the east coast. He told her that is one of the prices she paid in marrying a man who was in the service of the Navy. He told her after her husband had died that that was what her husband was fighting for, so people

could live like Americans. I [624] think that would be a fine time for him—this was long before the suit had been filed—to express his German sentiments.

Now, you have a recluse here. You have an odd person. He has found in America certain things. My father found certain other things. I am deeply sympathetic to what men find in this country. I think native born people vote according to what they will find in the election of certain men or the defeat of others.

The most striking thing, the most significant thing in the government's testimony is this: Assuming all of them are honest and all are well intentioned, take the testimony of Mr. Rankin. He says positively he heard you discuss these matters with Mr. Bergmann and you know it isn't so; and I presume it isn't so because surely the records of the Court would show that and yet Mr. Rankin left this court completely convinced that that had happened. Now, he testified Bergmann said he was an ex-German soldier. If his testimony about that is as reliable as his testimony "You engaged in a conversation about this war business or about this reference or you interrogated personally on this subject matter"?

Now, the charge in this case is fraud. Stripped of all its legal verbiage, what is fraud? It is fooling people. We fooled somebody. That is what counts. That is a necessary element. I think it is number 3 or number 4 in the historic figure 5 which I have heard discussed. Somebody says some- [625] thing they know isn't so. They tell it to you knowing

that you don't know any better and that you have faith in them, that you believe it. You act on it and you act on it to your own detriment. Who has been fooled? That came right up in the government's questioning of this man. Question No. 26 is an unfortunate question. I think it should be changed. Why does the government itself say, "Will you bear arms in defense of this country?" I don't know why it doesn't say, "Will you bear arms for the United States?" You have a man born abroad. You have probably noticed sometimes he translates—his lips move and he translates words that aren't perfectly clear to him in English. He underscores the word "defense" and he underscores the word "yes" and the government is impressed by that underscoring and says, "What do you mean?"

He said, "I will always defend this country against anybody but I hope I will never have to fight against Germany."

The government examiner discusses it with his superior. Mr. Bergmann doesn't see what is written down, but when it is called to his attention, when he understands that there can be no mental reservations, he gives up his mental reservations. Who was fooled? Nobody was fooled. He takes and crosses that out and later on goes into this court, takes his oath of citizenship in the utmost good faith and without any intention to not be according to his life a true and loyal citizen of this country. I do not believe the government has sustained its burden of proving that the man defrauded [626] this government by means of his mental reserva-

tions and his insincere taking of the oath of allegiance to this country.

The Court: I want to make one observation here before you start your closing argument.

Mr. Dean: Very well.

The Court: These cases do not require that the fraud be actually in the sense in which it might be used in a prosecution in an action, for instance, to set aside a conveyance.

Just a moment, until I find the case I am looking for.

Judge Cushman of the Western District of Washington in a case which arose during the last war, U. S. vs. Herberger, 272 Fed. 278, used this expression:

> "Loyalty or allegiance is, necessarily, of slow growth; therefore, somewhat involuntary, not fully subject to the will. Those who lightly, for temporary advantages, undertake to change their allegiance, are liable to overlook the deep-seated nature of this feeling; but the fact that not until afterwards, in times of stress, is it made manifest that the desires, suffered to lie dormant, are stronger for their native than their adopted country, although this fact may not be fully realized at the time of their naturalization, renders it nonetheless a legal fraud for the applicant to fail to disclose his true, although latent, feeling in such a matter."

There is similar language in the case that you cited, [627] that Hungarian name Tapolcsancy, U. S.

vs. Tapolcsancy. That is a Circuit Court case and it uses language of similar character. In fact, Judge Cushman said that if it be shown that the seeds of such feelings were fertile within him at the time of his naturalization, the burden shifts to the defendant to show a revulsion of feeling, if any, after his naturalization.

I wanted to call that to your attention for any comment you may desire to make because I do not think it is necessary. At least, I know of no cases in which it has been held necessary to prove fraud with the exactness of the five elements which constitute civil fraud and four which constitute criminal fraud, which you have enumerated, that is, the making of a self statement, knowing it to be false, with intent, and reliance upon, and then damage in case you sue for civil fraud and, of course, in criminal fraud it is immaterial.

My reaction to the reading of all the cases—and I think I read every one of them—is that the government does not have to prove fraud as that is defined in the law of frauds.

We have in this district a very recent case decided by Judge O'Connor. It is the case of U. S. vs. Shapiro. That was a revocation of citizenship, and in that case the certificate was revoked upon a showing that the applicant had gained admission to this country by representing herself to be somebody else. Of course, in one respect you might say that is [628] a very laudable ambition for a person to want to get in so badly that she poses as somebody else. The object in that case, I presume,

was to avoid the quota. But Judge O'Connor in speaking of the oath prescribed by Section 735 says:

> "There are four positive, definite and unequivocal agreements. If the oath is taken without any intention of renouncing allegiance to a foreign government; or without any intention of supporting and defending the laws of the United States against all enemies, foreign and domestic; or without any intention to bear true faith and allegiance to the United States; or if the oath is not taken freely without any mental reservation or purpose of evasion, no one would seriously contend that the alien had, in reality, become a citizen of the United States. When Congress included the promise 'to support and defend the Constitution and laws of the United States of America', it had in mind, no doubt, the elimination of so-called fifth and sixth columnists."

He held that merely the representation of herself as somebody else was an impersonation which was a fraud on the United States.

These cases indicate that when you are dealing with an intangible like loyalty, you are not limited in your proof to the strictness with which you would have to charge a fraudulent scheme in an indictment for using the mails to defraud or in which you would seek to set aside a conveyance [629] by rescinding a contract on the ground fraud; nor is it the rule that in cases of this character we can apply the criminal law doctrine that if certain acts

of Congress had been interpreted as consistent with good intentions, they should be so interpreted. There is no such requirement in civil action—and this is a civil action—under the Congress of the United States.

I want to read that decision in the Tapolosancyi. What is that citation you had there? 31 Fed. (2nd), isn't it?

Mr. Howser: I have 32 Fed. (2nd).

The Court: All right; I think you are right.

Mr. Howser: 385.

The Court: I have been reading so many of these cases.

Mr. Dean: There is another citation, 40 Fed. (2nd) 255, your Honor, which may be the Circuit Court as distinguished from the District Court decision. 40 Fed. (2nd) 255 is the citation I have here for the Circuit Court.

The Court: I want to read something that appears there which bears upon the proposition. I want counsel to have a correct understanding.

Wait a minute. I think it is right here. What is that; 31 Fed. (2nd)?

Mr. Howser: No, we have 32 Fed. (2nd) 385, your Honor.

The Court: It is in there, I think, in one of the books in the other room, Mr. Somers.

The other one you say is 40 Fed. (2nd)? [630]

Mr. Dean: 40 Fed. (2nd), 255.

The Court: In that case we have two opinions. We have the District Court opinion and the Circuit Court opinion. The court here draws a distinction

between the rights of a citizen and the rights of an alien. That distinction is quite apparent from an analysis of the law because when conditions are imposed upon an alien before he can become a citizen without similar requirements being made of a citizen before he exercises his rights.

To illustrate, for instance, a man may be immoral or of bad moral character and unless he has actually been convicted of a felony you can't deprive him of his civil rights. An alien applying for citizenship must say that he is and has been a good moral character for a period of five years. Some judges denied citizenship because a man was accused of a misdemeanor. During the days of prohibition continuously the courts denied citizenship to persons who had been found violating the prohibition law although that was the favorite sport of all the American people for ten years.

In answer to the argument that after all this man had a right to advocate the overthrow of the government by force, the court made this answer:

> "While no one may be deeply attached to every provision of the Constitution and while all citizens have a right to work for its amendment in an orderly way, that is the right of a citizen. The respondent [631] approached that right not as a citizen but as an alien. As an alien he had no such right. Moreover, citizenship itself is not a right; it is a privilege——a civil status conferring rights and immunities. The respondent alien, of course, was free to apply for the privilege which the soverign govern-

ment might refuse altogether or might grant on such conditions as it should impose. In this instance it imposed upon the respondent the indispensable condition that he be attached to the principles of the Constitution."

When you consider that you are dealing with a privilege that can be obtained only in strict compliance with the requirements, the government has the right to refuse under the law of the nation to naturalize anybody.

Incidentally, Mr. Bergmann himself, you know, labors under that Teutonic Northern Europe theory which, of course, is also the basis of our present restriction law. The assumption is that we brown haired, blue eyed persons are better than the dark haired persons wherever we are found. He makes this statement in there that the reason be believes the English and American ought to combine is because they are Teutons and there is more crime from people coming from Southern Europe than from those that come from Northern Europe. Well, he merely gives expression to the common belief which led to the promulgation of the present restrictive immigration laws and the quotas are based upon that theory [632] that the Northern European people are more easily assimilable and the southern people are less easily assimilable and for that reason——that was the status back in 1890——it is for the best interest of the country that the northern people should have a greater number than the southern people. Of course, any student of sociology or ethnology can

show in a minute that there is no foundation in fact or in science for that assumption. Ethnologists can not find the criminal quantum dependent upon eyes, color of the eyes or form of the cranium.

I am merely referring to that to illustrate the proposition that we ought to have an understanding of what we are dealing with, and we are dealing with a privilege that must be conferred and the burden is upon those who seek to obtain it to show that he has complied in all respects with the requirements. If later on, either through concealment, directly or indirectly, or even through ignorance, it appears that any of these requirements did not exist, it amounts to legal fraud.

Now, I just wanted to make that statement so we could have an understanding. You didn't argue the law. I didn't insist on it. But this is the reading that I give to these cases and I think I have read every one that has been published in the last 30 years.

The first cases that arose in this country, arose after the last war and there have been four or five decisions in [633] writing since the last war. So if you desire to make any comment on that, why, I will be glad to have you do so.

Mr. Jacobson: I don't believe so.

The Court: In other words, the principle which you suggest, that you and Mr. Howser suggest is between two apparently contradictory facts. We choose the one that is more consonant with loyalty than the other. That is merely an application of a doctrine applying to criminal law, and the other one, your proposition that the fraud must be proved with a

certainty with which you would prove it in a civil case of fraud, is likewise a doctrine which is not applied in these cases.

Ultimately, I agree with you there should be no judgment depriving a person of citizenship unless there is substantial proof that there has been a failure to satisfy one of these requiremnts. When the failure amounts to concealment of ones loyalty, the proof should be direct and positive. Now, other than that, I don't agree with your statements of the principle of law. I am not going to express any opinion on the facts because that would be the decision. That I will do when I decide the case.

All right; anything further?

I promised we would be finished this afternoon. I don't want to rush anybody. We have been working very hard, all of us. I haven't been out of my chambers all day. I had a sandwich and a glass of milk brought in to me while I was [634] working on some other matters.

Mr. Dean: As far as the government is concerned, your Honor, we are going to submit it without further argument.

The Court: I see. All right.

Mr. Jacobson: We will submit it.

The Court: The matter may stand submitted. While I have given a good deal of study to the matter and studied every case that has been published, I feel I want to give it further thought and further study and it well may be if my present intentions can be carried out, as I have all the material right at hand and it is fresh in my mind, I might write a short

opinion determining the matter and you will receive proper notice through the clerk.

I want to say, gentlemen, a case of this character usually develops animosity. There is a good deal of feeling in the matter. I think counsel on both sides should be congratulated for the dignified manner in which it was conducted, in which they conducted the case. I think the witnesses did the same thing. I think the defendant probably allowed his emotionalism to get the better of him once or twice, and I want to warn him there are some judges who would not tolerate a person calling another witness a liar in open court even if you think he is. It is not in accordance with our sense of decorum or sense of propriety, because you can say, "It isn't so," or, "I do not think so." But to just shout "liar" with great emotion is not done in the average American court, [635] especially in the Federal Court.

Mr. Jacobson: I am sorry he said it, your Honor.

The Court: I am apologizing for him because, you see, I don't want to give him that warning. I don't want to give my biography, but I started out —I, too, was born abroad, although I was not a member of such a large family as either of you. I merely wanted to warn him in a friendly spirit that one should eschew things like that in court.

All right.

(Whereupon, at 4:00 o'clock P.M., Friday, November 20, 1942, the hearing in the above-entitled case was concluded.)

[Endorsed]: Filed February 22, 1943. [636]

[Endorsed]: No. 10387. United States Circuit Court of Appeals for the Ninth Circuit. Friedrich Walter Bergmann, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California Central Division.

Filed March 13, 1943.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
For the Ninth Circuit

No. 10387

UNITED STATES OF AMERICA,
Plaintiff and Appellee,

v.

FRIEDRICH WALTER BERGMANN,
Defendant and Appellant.

* * * * * * * * *

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY UPON APPEAL AND DESIGNATION OF RECORD TO BE PRINTED.

* * * * * * * * *

Appellant hereby adopts and relies upon the Statement of Points filed in the District Court and

designates the entire record on appeal as necessary for the consideration of said appeal and to be printed.

Appellant desires one exhibit, to wit: appellants application for citizenship (form 26) to be reproduced, the other exhibits to be printed.

Dated: March 16, 1943.

WALHFRED JACOBSON,
Attorney for Appellant.

(AFFIDAVIT OF SERVICE BY MAIL
1013a, C. C. P.)

State of California,
County of Los Angeles—ss.

Golda Jacobson, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the county of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within above entitled action; that affiant's business address is: 517 Jergins Trust Bldg. Long Beach, Calif., that on the 15 day of March, 1943, affiant served the within Statement of points on which appellant intends to rely upon appeal and designation of record to be printed on the Plaintiff in said action, by placing a true copy thereof, in an envelope addressed to the attorney of record for said Plaintiff at the office address of said attorneys, as follows: "Leo Silverstein, U. S. Attorney, John Marvin Dean, Ass't U. S. Attorney, 6th Floor, U. S. Post Office and Federal Bldg., Los Angeles, California": and by

then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Mail at Long Beach, California, where is located the office of the attorney for the person by and for whom said service was made.

That there is a delivery service by United States mail at the place so addressed or there is a regular communication by mail between the place of mailing and the place so addressed.

Subscribed and sworn to before me this 15th day of March, 1943.

GOLDA JACOBSON

[Seal] WALHFRED JACOBSON,

Notary Public in and for said County and State of California.

[Endorsed]: Filed Mar. 17, 1943. Paul P. O'Brien, Clerk.

No. 10387

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

FRIEDRICH WALTER BERGMANN,

Appellant

vs.

UNITED STATES OF AMERICA,

Appellee

BRIEF OF APPELLANT.

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No. 10387

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

FRIEDRICH WALTER BERGMANN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

BRIEF OF APPELLANT.

I.

Statement of Basis of Jurisdiction.

On July 3, 1942 the United States Attorney for the Southern District of California filed a complaint against appellant which alleged that the order of the District Court for the Southern District of California made on April 9, 1937 admitting appellant to citizenship should be revoked and set aside and Certificate of Naturalization No. 4262178 issued to appellant pursuant to said Order should be cancelled because of appellant's alleged fraud and illegal conduct in procuring the same. [R. 4, 5.] Authority for filing said action is found in the provisions of Section 338 of the Nationality Act of 1940, 54 Stat. 1158 [United States Code, Title 8, Section 738; Appendix p. 5].

Judgment in favor of appellee was entered on Nov. 30, 1942. [R. 32.] On Feb. 19, 1943 appellant filed Notice of Appeal. [R. 33.] At the same time appellant filed his STATEMENT OF POINTS [R. 33-36], STIPULATION AND ORDER THAT CLERK MAY SEND EXHIBITS TO CIRCUIT COURT OF APPEALS [R. 37], DESIGNATION OF CONTENTS OF RECORD ON APPEAL [R. 38-39], and CASH BOND ON APPEAL. [R. 39.] Thereafter the record in this case, certified by the clerk of the District Court, was filed with the Clerk of this Honorable Court. [R. 40-41.]

This Honorable Court has jurisdiction to hear this appeal. [United States Code, Title 28, Sections 211, 225, and 230; Sections 116 and 128 of the Judicial Code; Appendix, p. 7].

II.

Statement of Case.

A. Issues Raised by the Pleadings.

The complaint alleged that on Nov. 5, 1936 appellant filed his Petition for Naturalization No. 246-P-52847 in the District Court of the United States for the Southern District of California and that on April 9, 1937 in open court he took the oath of allegiance as required by law. [R. 3.]

With respect to appellant's petition the complaint alleged: (1) that appellant stated therein that he was attached to the principles of the Constitution of the United States; (2) that appellant further stated that he intended to become a citizen of the United States and to renounce allegiance and fidelity to any foreign prince, potentate, state and sovereignty, and particularly to The German

Reich of which at that time he was a subject; and (3) that appellant further stated that it was his intention to reside permanently in the United States. [R. 3.] The complaint alleged that the foregoing representations were false and fraudulent. [R. 4.]

With respect to the oath of allegiance taken by appellant on April 9, 1937, the complaint alleged that appellant swore falsely and fraudulently when he took said oath in that: (1) appellant did not, in fact, renounce and abjure all allegiance and fidelity to the German Reich; (2) that he did not in fact intend to support the Constitution of the United States against all enemies foreign and domestic; and (3) that he did not in fact intend to bear true faith and allegiance to the same, but did intend to remain a subject of the German Reich and to maintain his allegiance thereto. [R. 4-5.]

These alleged misrepresentations, the complaint alleges, induced the District Court to make an order admitting appellant to citizenship. [R. 4.] Certificate of Naturalization No. 4262178 was thereupon issued to appellant by the clerk of the Court. [R. 4.]

The complaint then alleges that appellant procured his Certificate of Naturalization on April 9, 1937 *fraudulently* and *illegally* (emphasis added) and for the purpose of obtaining the rights, privileges and protection of American citizenship without intending to assume the duties thereof; therefore, charges the complaint, appellant's Certificate of Naturalization is subject to cancellation. [R. 5.]

Appellant's answer did not deny the filing of the petition, the taking of the oath of allegiance, and the issuance

of the certificate but did deny each and every charge of misrepresentation, fraud, and illegality alleged in the complaint. [R. 6.]

In addition to the aforesaid denials appellant plead two affirmative defenses. In these affirmative defenses appellant alleged: (1) his departure from Germany in 1911 at the age of seventeen years, his eleven year residence in Canada, and his arrival in the United States in July, 1922; (2) his arrival in Long Beach in 1923 and his continuous residence in said city thereafter, except for trips; (3) his law abiding conduct both in the United States and Canada; (4) that he never returned to Germany after leaving it and that he hoped to visit his mother at the conclusion of the present war, his mother being his sole and only interest in Germany; (5) that he has performed his duties as a citizen to the best of his ability and that he has no allegiance to any government or nation than the United States; (6) that all of his property is located in Los Angeles County; (7) that on Dec. 19, 1941 he purchased a $1,000.00 face value United States Defense Bond, Series E, which represented approximately 15% of his net income for the year 1941, and that it was his intention to thereafter devote a like percentage so long as the need to do so exists; (8) that he is opposed to German militaristic policies and to autocracy and class rule based on birth and to any governmental rule of any kind not based on other than the will of the majority of the people as expressed by free elections; (9) that he believes whole heartedly in the Republic of the United States and its principles as set forth in the Constitution, the Declaration of Independence, the Gettysburg Address, and as expressed by great Americans; (10) his intention to leave

his property to the City of Long Beach and certain specified charitable organizations; and (11) his religious beliefs. [R. 6-13.]

The issues thus presented by the pleadings are: (1) was appellant guilty of fraud as alleged in the complaint?; (2) did appellant in 1937 procure his Certificate of Naturalization fraudulently and illegally?; and (3) was appellant's conduct consistent with his contention that he had in fact renounced all allegiance to the German Reich and had transferred his sole and unreserved allegiance to the United States and was attached to the principles of the Constitution of the United States at the time he took his oath of allegiance on April 9, 1937 and during the five years immediately prior thereto?

B. Issue Tried.

The issue actually tried was the sole issue of fraud. [R. 43.] In his opening statement counsel for appellee stated that the basis of appellee's contention was that appellant was guilty of fraud on two grounds: (1) that at the time appellant took the oath of allegiance he reserved allegiance to the German Reich and (2) that he intended to return to Germany to live permanently. [R. 43.] The trial court accepted this version of the issues ["The proof here is directed to one cause only." R. 271; see, also, R. 284-286, 357-358, 508.]

C. The Findings.

The findings of fact are general. They follow the language of the complaint almost verbatim. They ignore the affirmative defenses. [R. 27-30.] The conclusion of law is that appellant procured his Certificate of Naturalization fraudulently and illegally. [R. 30.]

D. Statement of Facts.

The facts can best be understood by grouping them into the four chronological periods into which they naturally group: (1) the first period—1911 to July 13, 1922; (2) the second period—July 14, 1922 to April 9, 1937; (3) the third period—April 10, 1937 to Dec. 8, 1941; and (4) the fourth period—Dec. 9, 1941 to Nov. 30, 1942.

1. The First Period—1911 to July 13, 1922.

This covers the period between the time of appellant's departure from Germany at the age of 17 years until his arrival at Eastport, Idaho. What occurred in this period is found chiefly in appellant's answer [R. 6-7], Appellee's Exhibit No. 1 [R. 227-230, Application and Petition for Naturalization], and appellant's testimony. [R. 463-476.]

Briefly the foregoing shows that appellant left Germany at the age of 17; that his brother Edmund was his guardian; that he never served in the German army and never intended to; that his education was the equivalent of an American senior high school with some night school training in commercial subjects; that he went to Canada via the Port of New York, where he stayed until he emigrated to the United States in July, 1922; that he registered as an enemy alien in Canada during World War I; that he was law abiding; and that he did not return to Germany.

2. The Second Period—July 14, 1922 to April 9, 1937.

This period covers the time from appellant's arrival in the United States until he took the oath of allegiance on

April 9, 1937, and received his Certificate of Naturalization. Knowledge of this period comes from appellant's answer [R. 8-11], Appellee's Exhibit No. 1 [R. 227-230], three of appellee's witnesses [Haschke, R. 214-220; Barber, R. 221-235, 615-620; Rankin, R. 258-265], and thirteen of appellant's witnesses [Crump, R. 278-292; Horan, R, 301-310; Dungen, R. 310-317; Starks, R. 318-335; Geselman, R. 346-363; Ellis, R. 365-370; Rohrs, R. 384-393; Grant, R. 394-400; Mason, R. 401-406; Kammerer, R. 407-420; Kingman, R. 421-455; Kellegher, R. 458-463; Bergmann, R. 463-608.]

From Eastport, Idaho, the port through which appellant entered the United States, appellant went directly to Spokane, Washington, where his brother Charles lived and was engaged in the fur business. [R. 479.] Appellant's intention in coming to the United States was to acquire citizenship. Both of his brothers, Charles and Edmund, were at that time citizens of the United States. [R. 479.]

In January, 1923 appellant left Spokane, ultimately arriving in Long Beach in March, 1923 where he has resided ever since. [R. 476.] Appellant bought land in Long Beach and improved it. [R. 481.]

Haschke, a retired electrical engineer, stated: (1) that he had lived next door to appellant for 12 years [R. 214]; (2) that perhaps a dozen times in the past 10 or 12 years appellant had raised his *left* hand and said "Heil Hitler" [R. 215]; (3) that five or six or seven years ago some Navy boys were drilling across the street from appellant's property holding maneuvers [R. 215]; while this was going on appellant "pranced around," pounded his

fist on the fence post and said that America would be sorry if she interfered with Germany. [R. 216.]

Barber, district law officer of the Immigration and Naturalization service at Los Angeles, testified: (1) that he took a statement from appellant in Nov. 1936 in connection with appellant's petition for citizenship [R. 221]; he checked appellant's petition for naturalization [R. 222]; question No. 26 was "If necessary, are you willing to take up arms in defense of this country" [R. 230]; appellant answered "Yes" underscoring the answer and the word "defense" in the question [R. 230]; he asked appellant if he had any objections to bearing arms in defense of the United States and appellant answered "No" but that he wouldn't bear arms in an attack upon Germany [R. 224]; Barber asked appellant if he could not take the oath unqualifiedly and he said he couldn't, that he wanted that qualification put in there, so Barber wrote it on the petition in pen and ink [R. 224]; by the time Barber finished checking the rest of the questions appellant said he wanted to withdraw the statement that he would not be willing to take up arms in an attack upon Germany, so Barber ran a line through the statement and crossed it out [R. 225]; Barber discussed appellant's answer to question No. 26 with a Mr. Terrill, whose province it was to pass upon the question of whether or not the case should be submitted to the Court [R. 232]; Barber and Terrill were convinced that appellant was willing to take the oath unqualifiedly [R. 234]; this was on Nov. 5, 1936 [R. 234]; more than 90 days later the certificate of Naturalization was issued. [R. 234.]

Rankin, the third of appellee's witnesses, testified: (1) that he attended the hearing on appellant's petition for

citizenship in April, 1937 [R. 258], and was present at the latter portion of it [R. 259]; that Judge Yankwich (the trial court) conducted the hearing [R. 261]; that appellant told the judge that he had served with the German Army in Turkey [R. 261]; Rankin had known appellant 18 years and he was willing to go to court and testify that he thought appellant was a proper person to be granted citizenship [R. 261]; he did not think he was confused about the name of the judge who conducted the hearing. [R. 263-264.]

Appellant's Witnesses.

Dr. Crump testified: (1) he is a dentist, has lived in Long Beach 22 years, and has three boys in military service [R. 278-279]; he has known appellant fifteen years [R. 279]; he has visited with appellant a good many hundred times. [R. 279.]

Horan testified: (1) he has known appellant since 1923 [R. 302]; his property is across the street from appellant's [R. 302]; appellant told him he intended to leave his property to the Salvation Army and the City of Long Beach, and the Y. M. C. A. [R. 304]; appellant stated that his mother was in Germany and that he sent her money. [R. 304.]

Dungen testified: (1) that he was a next door neighbor of appellant since May, 1923 [R. 310]; that he visited with appellant quite often, both he and appellant being single men [R. 311]; he talked with appellant "lots before" appellant became a citizen [R. 312]; a couple of years before appellant got his citizenship papers appellant told him he wanted to become a citizen [R. 313]; appellant always said that he liked this country [R. 314];

they had more than one conversation about that [R. 314]; that appellant stated he liked the way the laws and everything was in the United States [R. 314]; he liked it better than anywhere else [R. 314]; he said his mother was in Germany and that he would like to see her. [R. 314.]

Starks testified: (1) that she had lived in Long Beach 18 years and had been in the employ of the City Prosecutor's office since 1929 [R. 318]; (2) that she has known appellant for 12 years [R. 318]; (3) that appellant proposed marriage to her in 1932 but that she did not accept his proposal [R. 319]; (4) during 1934 or 1935 she had six or more conversations with appellant on general subjects [R. 321]; (5) appellant stated in 1932 that he left Germany to escape military training. [R. 325.]

Geiselman testified: (1) that he is assistant trust officer of the California Trust Company in Los Angeles, admitted to practice law in California and Nebraska, formerly county attorney for two terms in his home county in Nebraska, and that he served in the Navy during the World War I, having been discharged as an ensign [R. 346-347]; (2) that he met appellant in 1926 in connection with a transaction at the Trust Company [R. 347]; (3) about ten years elapsed before he met appellant again [R. 347]; (4) since 1936 he has visited and conversed with appellant about eight or ten times a year [R. 348]; (5) appellant would compare how liberal our form of government was to the forms of government in Europe where old hatreds of one country against another existed for generations and couldn't be erased [R. 349]; (6) appellant stated that he was gratified to be able to do business with people generally here without any reflection upon him because of his accent [R. 349]; (7) that he could rely

largely upon the honesty of people here in the United States [R. 349]; (8) appellant commented upon the lack of vindictiveness by people because he may or may not have been of their particular race [R. 350]; (9) in appellant's stock and bond purchases he wouldn't have any wherein there was any influence or ownership in Europe. [R. 359.]

Ellis testified: (1) that he has resided 25 years in Long Beach [R. 365]; (2) that he is a licensed real estate broker [R. 365]; (3) that he had known appellant 15 years [R. 366]; (4) that he first met appellant when appellant tried to sell him some palm trees [R. 366]; (5) during the period of their acquaintanceship appellant has never engaged himself in any organization similar to the Nazi Bund or any other un-American organizations. [R. 366, 367.]

Rohrs testified: (1) that he is a city gardener of the City of Long Beach [R. 385]; (2) that he had lived in Long Beach 18 years and is a veteran of World War I [R. 385]; (3) that his acquaintance with appellant started in 1928 [R. 385]; (4) that appellant was interested in plants and trees and used to come through the park where he worked quite often. [R. 385.]

Grant testified: (1) that he is a clerk in a Long Beach bank and has been since Oct. 1925 [R. 394]; (2) that he had known appellant since July, 1932 [R. 394]; (3) that he had business dealings with appellant—trust deed foreclosures—in 1932 and 1934 [R. 395]; (4) he had lunch with appellant at appellant's apartment [R. 395] and had several conversations with appellant, both in the office and in appellant's apartment [R. 396]; (5) one day at appellant's invitation he went to the Los Angeles Museum to

look at appellant's collection, but appellant not being there, Grant did not examine it [R. 397]; (6) in 1932 appellant said that he was going to leave his collection to some museum. [R. 397.]

Dolores Mason testified: (1) that she had lived in Long Beach since 1933 [R. 401]; (2) that she was appellant's neighbor from 1933 to 1937 [R. 401]; (3) that in 1933 or 1934 she told appellant that she was lonesome, resenting the fact that her husband, a Navy man, was away [R. 402, 403]; (4) that appellant replied to her that that wasn't the way to do things—that there was everything in this country if she would just go out and get it—that if she wanted her husband to be proud of her she should do something [R. 403]; (5) in none of her visits did she hear appellant criticize our form of government [R. 405]; (6) in 1936 appellant told her that he wished he could make a park in the neighborhood so that people in that end of town who couldn't afford some of the other things would have at least that much beauty. [R. 406.]

Kammerer testified: (1) that he had lived in Long Beach 23 years, is a family man with 5 children and is a real estate broker working at Calship on the swing shift [R. 407]; (2) his 19 year acquaintanceship with appellant has been both social and business [R.408]; (3) appellant and he had taken Sunday drives at least 50 times [R. 409]; (4) appellant mentioned that he was going to leave his property to the "Y" and Salvation Army, different organizations—some to a few private people [R. 409]; (5) more than once appellant told Kammerer he left Germany on account of getting away from the military [R. 409], probably making the statement in 1926

[R. 410]; (6) in 1936 or 1937 appellant told Kammerer he was going to apply for citizenship papers. [R. 411.]

Kingman testified (by deposition): (1) that he is President of Plomb Tools Contracting Company, a subsidiary of Plomb Tool Company [R. 422]; they do work for the Army Air Force [R. 422]; (2) he has lived in California since 1892 except for 10 years absence in the East [R. 422]; (3) he has known appellant since 1935 [R. 423]; (4) he has seen appellant a great many times since then [R. 424]; (5) he has seen appellant's archelogical collections in the Los Angeles County Museum and has talked with Dr. Bryan, its head [R. 425]; (6) appellant said he was going to leave his collections to the museum [R. 426] and his property to the Salvation Army and Y. M. C. A. [R. 427]; (7) he has never heard appellant make any disloyal statement to this country [R. 428]; (8) he has been in appellant's home more than a hundred times and has never observed any German literature or newspapers in appellant's home [R. 429]; (9) appellant is very frugal [R. 429], very miserly, does his own cooking and eats it alone [R. 430]; (10) in 1935 and 1936 appellant admired Hitler and the youth movement and the progress economically that attended Hitler in Germany [R. 452]; as time went on Hitler's military progress alarmed him that the world might get into another war and that the physical training and youth movement would lead to a lot of disaster. [R. 452.]

Bergmann testified: (1) that he arrived in Long Beach in March, 1923 [R. 476]; (2) he bought land and improved it and thinks he is a very civic minded citizen [R. 481-482]; (3) he recalls his interview with Barber with reference to his application for naturalization [R.

486]; (4) he told Barber he would bear arms against Germany for the United States [R. 487]; (5) he made up his mind right at that time that he would do so, even if he had to fight on German soil [R. 488]; (6) he took the oath of allegiance without any reservation whatsoever [R. 489]; (7) he had never had any contact with Germans in this country or been back to Germany since he left [R. 495]; (8) he had said "Heil Hitler" two or three times in a joking way to Haschke who had said the same thing to him one time. [R. 501.]

3. The Third Period—April 10, 1937 to December 8, 1941.

This covers the period immediately following appellant's admission to citizenship up to and including the declaration of war by the United States on Germany, Italy and Japan.

(a) *Appellee's Witnesses.*

Ernest C. Williams: (1) had one conversation with appellant in April, 1941 [R. 45]; (2) Shields was with him [R. 45]; (3) appellant criticized the administration, that he didn't like Mr. Roosevelt and the Jewish influence in the administration [R. 47]; (4) appellant said he served in the German Army in World War I and had a brother who was then (1941) a submarine instructor in Japan [R. 47]; (5) appellant professed to admire the United States [R. 48]; (6) appellant said Hitler was a very great man and admired his principles [R. 47]; (7) appellant was happy and jolly all afternoon [R. 54]; (8) about an hour before he and Shields left appellant gave the "Heil Hitler" salute [R. 48, 56]; (9) the afternoon was a regular talk fest. [R. 56, 57.]

Shields: Williams was his swamper on the trip. [R. 147.] Since his testimony is substantially the same as Williams it will not be repeated. [R. 147-158.]

Pelliter: (1) she is engaged in the hotel business in Long Beach where she has lived 13 or 14 years [R. 64]; (2) she has known appellant seven years [R. 59]; (3) in April, 1939 she recalled having a conversation with appellant about leasing appellant's property [R. 60]; (4) appellant said he was going away to Germany and might be gone two or three years [R. 60]; (5) appellant said United States bonds were not safe, not to invest in them [R. 61]; (6) appellant said that the German people were more intelligent than the American people—that the American people did not know how to make money [R. 63]; (7) appellant said that the United States was a good place to live but that he didn't want to be buried here. [R. 64.]

Huggins: (1) discussed lend lease with appellant in the fall of 1941 with appellant who said that if he knew that the United States was going to furnish England with materials he didn't know whether he would become a citizen or not [R. 75]; (2) in another conversation about a month later appellant said he thought he would like to go and make a visit to Japan, that the people of Japan were nice people [R. 76]; (3) appellant thought the American people misunderstood Hitler who was a very nice man [R. 78]; (4) early in 1941 Huggins introduced appellant to his mother, Mrs. Duell [R. 78]; (5) appellant spoke first in German and then in French to her [R. 78]; (6) when Mrs. Duell said she couldn't understand him he said "I am a Nazi" [R. 7]; (7) appellant had a smile on his face when he said this [R. 3];

(8) appellant was bitter toward England and said he didn't like for material to be loaned or sold or given to England [R. 85]; (9) that was prior to the United States being involved in the war and at the time he didn't consider appellant's remarks out of the ordinary. [R. 85.]

Mrs. Huggins: She testified that appellant spoke to Mrs. Duell in French and German and then said that he was a Nazi. [R. 171-172.]

Kennedy: (1) has lived in Long Beach 22 years [R. 89]; (2) has known appellant 10 or 15 years [R. 90]; (3) in the fall of 1941 he had a conversation with appellant in the office of the Building Department of Long Beach where Kennedy is assistant building inspector [R. 90]; (4) Vaughan, a plastering inspector, was present [R. 90]; (5) appellant had previously left some pamphlets of a speech (about the time of Lindbergh's and Wheeler's speeches) and came in to see if Kennedy had read it [R. 90]; (6) they were published by America First [R. 91]; (7) the three of them started discussing the war [R. 91]; (8) appellant was asked when he was going back to Germany and he replied "as soon as the war was over" [R. 91]; (9) he said he would stay there [R. 92]; (10) appellant said that he didn't know when the war would be over but "when it comes to the worst, we—Hitler—will use gas" [R. 91]; (11) a short time before this conversation appellant told Kennedy he had been a citizen for two years. [R. 96.]

Vaughan: (1) he is the plastering inspector and had a conversation with appellant in 1941 [R. 211]; (2) appellant had some Lindbergh and Wheeler literature he was passing out [R. 211]; (3) he said the war wouldn't last

another year if the United States stayed out [R. 212]; (4) the reason the war would end so quickly was that "We—Hitler will use gas and wind it up quick" [R. 212.]

J. M. Williams: (1) is a vice president of the Bank of America in Long Beach where he has lived 9 years [R. 173]; (2) in 1940 after the fall of France he had a conversation with appellant in the bank [R. 173]; (3) in answer to Williams' question how the war looked appellant said he thought Hitler would be in London about Sept. 15 and the war would then be over [R. 174]; (4) with the war over Germany would be a clearing house for international trade [R. 175]; (5) appellant stated that the bad impression the people of this country had of Hitler was due to misrepresentation by the press which was controlled by Jews [R. 175]; (6) appellant said he thought Hitler was in reality a good kind Christian gentleman—that he only wanted to do good [R. 175]; (7) Williams wouldn't be too sure that appellant said that Hitler was a good man or whether he said Hitler thought he was a good man. [R. 180.]

Kelgard: (1) he has lived in Long Beach 41 years [R. 97]; (2) he has known appellant in a business way 15 years [R. 97]; (3) late in 1939 he talked with appellant about the war—just before the fall of France [R. 97]; (4) appellant said he felt like going back to Germany and helping whip England [R. 98]; (5) a lot of Long Beach people belonged to America First and a lot of Kelgard's neighbors, native born citizens, took sides one way or the other [R. 99]; (6) at the time appellant's remarks didn't impress Kelgard as being any different from the speeches by Wheeler, Lindbergh and others. [R. 100.]

Thiessen: (1) in August, 1939 someone told her appellant wasn't very patriotic so she went down to "pump" appellant [R. 102]; (2) appellant told her he came here after World War I ended, that he fought in the German Army and wanted to go back and fight 3 years more [R. 102]; (3) in the event he returned to Germany he would not come back but would go to Egypt and look for lost missions [R. 103]; (4) the yard was nice and clean but the furnishings were not kept up. [R. 105, 106.]

Posey: (1) he is retired—he has lived in Long Beach 32 years [R. 110]; (2) he met appellant about 3 years ago [R. 110]; (3) he has had several conversations with appellant [R. 111]; (4) about July, 1940 appellant informed him that Hitler was O. K. [R. 112]; (5) appellant said that if Hitler came to the United States he would show us how to run the Government [R. 113]; (6) one time Posey believes that appellant said that after the war he would go back to the old country and live like a white man. [R. 114.]

Beck: (1) has been an insurance agent for 40 years and a resident of Long Beach for 30 years [R. 122]; (2) he met appellant in 1922 when he was a member of the City Council [R. 123]; (3) appellant was continuously improving his property and wanted the others to join with him in improving their property [R. 123]; (4) in 1936 or 1937 appellant told Beck he had taken out his citizenship papers [R. 124]; (5) in March, 1941 Beck called upon appellant for a subscription to the Y. M. C. A. [R. 124]; (6) appellant criticized the Government because it had given aid to England, that he seemed to hate England, that it made him ashamed of his citizenship [R. 125]; (7) appellant stated that Germany's con-

duct in killing innocent children was no worse than the Treaty of Versailles which provided for the starvation of the German people [R. 125]; (8) on one occasion appellant stated that upon his death he was going to leave certain property of his to the "Y" in Long Beach. [R. 131.]

Coleman: (1) is a jeweler and has lived in Long Beach 19 years [R. 134]; (2) has known appellant 3 or 4 years [R. 134]; (3) in March 1940 appellant told Coleman he had sent $1500 to Germany [R. 135]; (4) he had seen appellant 40 or 50 times and talked to him on most every occasion [R. 142]; (5) appellant disagreed with President Roosevelt's policies, which was opposite to what Coleman felt. [R. 143.]

Kinder: (1) she works in her husband's meat market in Long Beach where she has lived for 18 years [R. 159]; (2) she has known appellant about 2 years [R. 159]; (3) early in 1940 she went to appellant to ask him to rent her an apartment [R. 160]; (4) he told her he was lonely, didn't fit in this country so well and wanted to go back and see his mother [R. 161]; (5) he said he had fought for Germany and if he went back to Germany would do so again [R. 161]; (6) about a year later she talked to him again—she has talked to him many times [R. 162, 163]; (7) appellant stated at this conversation that he was dissatisfied with the political situation; that the Jews were in control of this country and that Hitler had a good plan in regard to the Jews [R. 164]; (8) a good many times she thought to herself that appellant was a German sympathizer [R. 166]; (9) none of the conversations occurred after the United States entered the war. [R. 167.]

Graham: (1) he has been a Long Beach police officer for 14 years [R. 182]; (2) he has known appellant 4 years [R. 182]; (3) the first time appellant mentioned Hitler was in 1940 [R. 182]; (4) he said Hitler was the greatest genius the world had ever known and that he had built the most wonderful military machine the world had ever known and had accomplished many things [R. 183]; (5) in Sept. 1941 he went to see appellant about leasing appellant's property [R. 183] but a lease was not consummated [R. 195]; (6) for a period of about 3 months appellant and Graham discussed "conditions" considerably [R. 184]; (7) appellant criticized the Government and called Roosevelt a dirty double crossing son-of-a-bitch, that he double crossed the German people and sold them out when he passed the Lend Lease Bill to help England [R. 184]; (8) appellant told Graham that he was a Captain in the German Army during World War I and had served in Turkey [R. 185]; (9) if he could lease his property he would leave on a trip about February 1, 1942 and eventually land up somewhere in South Africa [R. 185]; (10) that he took out his citizenship papers as a matter of good business [R. 185]; (11) that he would bless the date when he could tear them up and return to Germany to live like a white man [R. 186]; (12) Graham never made a report of his conversation with appellant to the Long Beach Police Department [R. 203]; (13) in April, 1942 he was questioned by Casey of the FBI. [R. 204.]

(b) *Appellant's Witnesses.*

Crump: (1) previous to Pearl Harbor appellant distributed Nye circulars on the intervention question [R. 281]; (2) appellant was an isolationist [R. 288]; (3) appellant stated that he admired this Government on account of its free institutions. [R. 291.]

Mitchell: (1) in the last 3 years when he delivered mail to appellant the latter received 2 letters only from Germany and they were from appellant's mother [R. 295]; (2) appellant received no deliveries of papers, periodicals or magazines of any kind from Mitchell. [R. 297.]

Horan: (1) appellant told Horan about having become a citizen and that he was very proud of it [R. 303]; (2) appellant said he was glad to be a citizen [R. 308]; (3) appellant said that he liked the American way of shaking hands after an election—in Europe appellant stated that the people didn't get over their pre-election bitterness after the election was over. [R. 309.]

Dungen: (1) when appellant got his citizenship papers he said he was glad [R. 312]; (2) appellant said he liked this country. [R. 313, 314.]

Starks: (1) when the war condition broke out in Europe in 1939 appellant said that he regretted from the bottom of his heart that this condition existed [R. 323]; (2) in the fall of 1940 appellant mentioned that he admired Wheeler and Lindbergh [R. 324]; (3) appellant

told Stark that he had received his citizenship papers, that this was the land of opportunity. [R. 330.]

Miller: (1) her husband is a Navy police officer [R. 337]; (2) she runs a beauty shop and manages apartments [R. 337]; (3) she became acquainted with appellant in Feb. 1938 when she called upon him and brought him some home made biscuits [R. 338]; (4) appellant told Miller in 1939 that he was an American citizen and that he was sure proud of it [R. 339]; (5) appellant stated that he liked our way of government and didn't like dictatorship—he liked to be in a country where he could vote [R. 340]; (6) there were never any German magazines or literature around his apartment. [R. 343.]

Geiselman: (1) in late 1939 or early 1940 appellant stated that he thought Hitler had the right idea about developing the health of the youth of Germany [R. 351]; (2) he thought Hitler was wrong in trying to glorify the military side of the training because it kept alive intense hatreds the different European countries had for each other [R. 351]; (3) he did not think Hitler could be considered a good leader for Germany because he was an Austrian and was "big-headed" [R. 351]; (4) he disliked the class distinctions based upon birth that existed in Europe [R. 352]; (5) appellant told Geiselman that he was a citizen, probably in 1938; (6) he said United States citizens were treated in the South Sea Islands with far more respect than Germans [R. 353]; (7) there were many discussions about appellant's plans with respect to the disposition of his property upon his death, but the plan of disposition remained the same [R. 355]; (8) he intended to give the collections to the Association and Museum and his property to the City of Long Beach,

Y. M. C. A., and Salvation Army [R. 355]; (9) appellant never purchased any stocks and bonds wherein there was any influence or any ownership of the companies in Europe [R. 359]; (10) appellant was bitter about using the German youth in the march into Poland and the other military campaigns. [R. 361.]

Ellis: (1) in the summer of 1941 appellant told Ellis that he had named the Y. M. C. A. and the Salvation Army as beneficiaries in his will [R. 368]; (2) about 2 years ago appellant stated that the United States should be careful and protect its own interests and look after its affairs at home and not take too much of our time or energy trying to help other nations. [R. 369.]

Trammell, Jr.: (1) former city attorney of Long Beach [R. 372]; (2) has known appellant since 1937 [R. 371]; (3) in 1937-1939 appellant told Trammell of his intended disposition of his property upon his death to the Y. M. C. A., etc. [R. 373]: (4) between August and November, 1941, appellant consulted Trammell professionally [R. 372]; (5) he saw appellant 15 or 20 times during that period [R. 373]; (6) in these conversations appellant stated that he was proud of the fact that he was an American citizen [R. 374]; (7) appellant spoke highly of the common people of England but had an antipathy towards the ruling class [R. 379-380]; (8) he said the German Government did get things done but he guessed that after all not getting things done so fast was the price we had to pay for democracy. [R. 375, 380.]

Rohrs: (1) either in 1937 or 1938 he had two visits with appellant [R. 386]; (2) appellant didn't think we had any business with foreign entanglements—we should

mind our own business [R. 388]; (3) appellant told Rohrs of his intended disposition of his property, such as to the Y. M. C. A., the Museum, etc. [R. 389]; (4) appellant had no use for nobility [R. 388]; (5) appellant said he could never go back to Germany because he left Germany to evade military training and he would probably be arrested if he went back [R. 390]; (6) Hitler was never mentioned. [R. 390.]

Grant: About the year 1938 appellant told Grant he was an American citizen. [R. 399.]

Kammerer: (1) in 1938 appellant told him that appellant had received his "last papers" [R. 411]; (2) he was proud he had his papers and was proud he was a citizen of the United States [R. 412]; (3) he said he would rather live here than any place he knew of—it was a wonderful country [R. 412]; (4) the way Wheeler and Lindbergh and "them" people were keeping us out of war was O. K. [R. 415.]

King: (1) about 2 years ago he had a conversation with appellant [R. 457]; (2) appellant said he was in favor of isolation—that we should keep out of foreign entanglements. [R. 457.]

Bergmann: (1) he did not give the "Heil, Hitler" salute to Williams and Shields [R. 484]; (2) he took his oath of allegiance on April 9, 1937 without any reservation whatsoever and still means it [R. 489]; he did not advise Mrs. Pelliter not to buy United States bonds, stating they were not safe [R. 490]; (3) he told her they were good bonds for security but paid a low interest rate —if she wanted good interest to buy industrials [R. 490]; (4) he did not tell her German people were more intelligent than the American [R. 491]; (5) he and Huggins

have had bad blood between them [R. 491]; (6) he told Huggins that Hitler thought he was a Christian man, the same as he said to J. M. Williams [R. 491]; (7) I did smile and in a joking spirit say "I am a Nazi" to Mrs. Duell [R. 493]; (8) he has heard "Heil Hitler" said by good Americans in a spirit of sociability and in a joking way [R. 494]; (9) he has had no contact with German Bunds or activities and does not read German magazines [R. 494]; (10) he has never been back to Germany [R. 496]; (11) he does not admire Hitler's youth movement as he has come to now understand it [R. 507]; (12) he was an isolationist until war occurred [R. 507]; (13) he has never called President Roosevelt a son of a bitch, but differed with his foreign policies prior to December 7, 1941 [R. 511]; (14) he has admired some of President Roosevelt's acts such as his C. C. C. camps [R. 511], and his policies toward the working man [R. 512]; (15) he did not vote in the 1940 Presidential election because he was confused on the issues [R. 513-514]; (16) he never told Graham that he obtained his citizenship papers as a business protection and would bless God when he could tear them up and leave this country [R. 518]; (17) when he talked to Mr. Beck, who spoke of a union with England, he said that he would tear up his citizenship papers if we ever had such a union with dukes, barons, etc. [R. 518]; (18) he did say to Mrs. Thiessen that Germany could do worse than take his money and that was that they could put him in jail for evading military service [R. 545-546]; (19) he did not tell Mr. Posey that if Hitler would come over here he would show us how to run the government [R. 547]; (20) he did tell Posey that he believed a dictatorship was more efficient than a democracy but that he was willing to

pay the price [R. 547]; (21) he did not tell Posey that when the war was over he would return to Germany and live like a white man [R. 547]; (22) ever since January 1937 he has drawn up a holographic will each year carrying out his plan to leave his property to the City of Long Beach, the Y. M. C. A., Salvation Army, Association and Museum [R. 552]: (23) he did not tell Graham that he got his citizenship papers for business reasons [R. 557]; (24) he did not state to Mr. Huggins that if he had known about lend lease he would never have taken out his citizenship papers [R. 562]; (25) he did not tell Graham that Hitler was the greatest living human on the face of the earth [R. 564]: (26) he did not tell Graham, or anyone else, that Hitler was a genius [R. 565]; (27) he did not tell Mrs. Kinder that he wanted to return to Germany to help Hitler win the war [R. 565]; (28) he did not ever refer to himself as "Hitler, Jr." or "Hitler the 2nd"—he has never used those expressions [R. 566]; (29) he never said that if Hitler needed what he had he would give Hitler everything he owned [R. 567]; (30) he did say dictatorship was more efficient than democracy but that he was willing to pay the price for a democracy because in a democracy you get freedom of action. [R. 568]; (31) he has never at any time wanted Hitler and the leaders of the German Reich to set up a dictatorship in the United States [R. 568]; (32) he has never at any time wanted the people of the United States to set up a dictatorship because he has strong republican ideas and has always felt that way [R. 568]; (33) he did oppose the lend lease program but not because it would hamper the conduct of the war by the German Government [R. 569]; (34) he has never served in the German Army and he has never told anyone that he had [R. 596]; (items 22-34 testified to on cross-examination).

4. The Fourth Period—December 9, 1941 to Nov. 30, 1942.

(a) *Appellee's Witnesses.*

Huggins: (1) in the evening a few days after Dec. 7, 1941 appellant said to him that the Japanese "had to do it" [R. 79]; (2) he "supposed" appellant was referring to the attack on Pearl Harbor [R. 80]; (3) Huggins replied to appellant that he did not see why but he does not remember appellant's reply. [R. 88.]

Coleman: (1) he talked with appellant in March, 1942 [R. 135]; (2) he called appellant's attention to a newspaper article in which Roosevelt made a plea to the other countries to be sympathetic and that we should come nearer to prayer [R. 136]; (3) appellant's reply was that this son-of-a-bitch would get his and that this god-damned religion would have to go [R. 136]; (4) when this country was taken over by Germany we could get things regulated, or something in that form, appellant said [R. 137]; (5) in April or June, 1942 he had another conversation with appellant [R. 137]; (6) appellant said the FBI was on his trail but that he could outsmart them [R. 138]; (7) in August, 1942, appellant and Coleman had another conversation in which appellant stated that the FBI had closed in on him and that he was awfully grieved over it; something about his citizenship [R. 138]; (8) appellant went into a great rage, pulled his hair and frothed at the mouth [R. 138]; (9) appellant asked Coleman to make a statement in regard to his character as a citizen but he told appellant he couldn't hardly afford to do that—he told appellant that "you know Mrs. Coleman, she is a teacher here and we can't do that" [R. 139]; (10) while appellant was telling Coleman his troubles

the latter did not remind appellant of some of the things which Coleman claimed appellant had previously said to him [R. 139]; (11) Coleman never expressed any opinion to appellant either of the latter's innocence or guilt of the charge. [R. 141.]

Williams, J. M.: (1) appellant asked if it was true that the sale of war bonds was only half of what it had been in January, 1942—this was in March, April or May, 1942 [R. 176]; (2) appellant seemed disappointed when Williams did not know the answer [R. 176]; (3) appellant was critical of the administration of our government —he thought there was a good deal of corruption [R. 177]; (4) when appellant asked about the sale of bonds there had been some discussion about the market for securities [R. 177]; (5) appellant stated that he was interested in knowing because it might influence his investment attitude and the sale of U. S. defense bonds would be a factor in the general financial picture. [R. 178.]

Graham: (1) in August, 1942 he asked appellant about the contemplated revocation of appellant's citizenship papers to which appellant replied that he did not give a damn, that he had already sent enough securities to Germany to take care of Walter as long as he lived [R. 189]; (2) in September, 1942 appellant asked Graham to be a witness for him [R. 191]; (3) Graham had gone down to ask appellant how the case was proceeding [R. 191]; (4) appellant asked him to forget everything that they had talked about but one thing—that appellant wanted to go back to Germany to see his mother [R. 191]; (5) it was Graham's business if he wanted to see appellant [R. 195]; (6) he went down to ask questions of appellant knowing the cancellation suit was pending [R. 195]; (7)

two, three, or four times he went to see appellant to discuss the case with appellant [R. 198]; (8) he has never tried to borrow money from appellant [R. 198]; (9) in April, 1942 Graham had been questioned by Casey of the FBI. [R. 203.]

Haschke: (1) appellant wanted him to testify for him in this case [R. 216-217]; (2) appellant cried two or three times during the conversation and Haschke was disgusted with him [R. 217]; (3) later on he talked with appellant in the park [R. 217]; (4) in this conversation he reminded appellant of the "Heil Hitler" incidents and of America interfering with Germany in the war [R. 218]; (5) Haschke asked appellant if appellant did not want to buy his property for $8,000 before he went away to the "evacuation" camp [R. 218]; (6) appellant replied that at that time with his troubles he couldn't buy any property [R. 219]; (7) later in the conversation Haschke may have said he would take $7,500 for his property. [R. 220.]

Casey: (1) he is Special Agent with the Federal Bureau of Investigation [R. 235]; (2) he interviewed appellant at his home in Long Beach on May 5, 1942 [R. 235]; (3) Mr. Gibbons, another agent, was with Casey [R. 236]; (4) the interview was reduced to a written statement which appellant signed [R. 239]; (5) the statement is in Casey's handwriting [R. 239]; (6) the statement was made up from notes Casey made [R. 242]; (7) appellant made no objection to having a search made of his premises [R. 243]; (8) the statement is in the record as Government's Exhibit No. 2 [R. 246-254]; (9) he does not recall whether appellant asked him for a copy of the statement. [R. 254.]

(b) *Appellant's Witnesses.*

Crump: (1) appellant said he thought the United States was justified in going to war with Japan [R. 283]; (2) appellant never talked about intervention after Pearl Harbor.

Mitchell: After this case came up Huggins, referring to Bergmann, wanted to know what Mitchell thought of "that damned dutchman." [R. 299.]

Horan: (1) about a week after Pearl Harbor appellant told Horan he was in hopes the United States would soon "clean up" on the Japs and Hitler. [R .315.]

Starks: (1) she saw appellant after service of the suit papers on him and talked with him [R. 333]; (2) on objection of counsel for appellee testimony as to this conversation was not permitted. [R. 333.]

Dolores Mason: (1) in the spring of 1942 she happened to see appellant, whom she had not seen since 1937 [R. 404]; (2) he remembered her [R. 404]; (3) she told him her husband's ship had been torpedoed and that he had been killed in the Battle of Midway [R. 405]; (4) she was very much downhearted [R. 405]; (5) appellant took her by both her arms, didn't say anything just for a minute and then said "Don't be like that, little girl. Get your chin up. That man was fighting for you and if you want to make him proud of you, you get out here, and get yourself a job and out of these dumps." [R. 405.]

Kammerer: (1) after war started appellant changed his mind like everyone else did—he has changed altogether [R. 415]; (2) appellant told him that "we will get rid of those dirty Japs" [R. 415]; (3) appellant has

conversed with Kammerer probably 15, maybe 50 times since January 1, 1942 [R. 416]; (4) he received a letter from appellant's attorney about testifying in the case [R. 417]; (5) appellant talked with Kammerer in August or September, 1942 about testifying in the case but appellant did not tell Kammerer what he wanted him to testify to—he never told him what to say [R. 417]; (6) appellant did not promise him more money than he was making at Cal-Ship to appear as a witness in this case. [R. 418.]

Bergmann: (1) he talked with Haschke in the park and asked him to be a witness [R. 499]; (2) Haschke told appellant he was an exceptional person who could live on air nearly without food [R. 500]; (3) Haschke told him everyone knows he is quite a citizen and what he has done in his neighborhood planting trees and shrubs and filling in the land; (4) "You are loyal and I don't know anything except I remember you said "Heil, Hitler" to me two or three times when you were greeting me when I passed along the fence" [R. 501]; (5) Bergmann said to Haschke that Haschke had similarly greeted Bergmann to which Haschke replied that maybe he did but that he didn't mean it [R. 501]; (6) Haschke said he would be a witness for Bergmann provided the latter would buy his two lots on Santa Clara avenue for $10,000 [R. 502]; (7) Haschke then came down to $8000, then to $7500 [R. 503]; (8) Bergmann refused to make any business deal with Haschke under the circumstances [R. 503-504]; (9) Bergmann differed with President Roosevelt in his policy prior to December 7th, but not after December 7th [R. 511]; (10) he will fight at any time wherever the United States flag flies [R. 545]; (11) Graham came to see appellant in August

and September, 1942 and asked for a loan of $500 [R. 548], but appellant refused the request [R. 549]; (12) he never asked Graham to forget everything he had told Graham except the statement that he wanted to see his mother after the war as Graham claimed [R. 550]; (13) when Graham made these calls on him he did not know that Graham had signed a statement in April, 1942 containing the facts he had testified to in Court [R. 556]; (14) in August, 1942 he did not say to Graham that he didn't give a damn about the naturalization proceedings —that he had been wise enough to send enough securities to Germany to take care of Walter as long as he lives [R. 557]; (15) he never made any such statements [R. 557]; (16) he never had a conversation with Graham about the sinking of two British battleships [R. 586]; (17) the only time he ever said he was a Nazi was to Mrs. Duell, and that was in a joking way [R. 588-589]; (18) he does not know where the two syllables in "Nazi" came from [R. 589]; (19) he believes that the Jews should have a land they can call their own. [R. 592.]

The statement, Government Exhibit No. 2 [R. 246-254]: (20) corrections were made in the statement and then Bergmann signed the statement [R. 533]; (21) appellant was disgusted with the white man for getting into this war—it was due to the failure of statesmen after World War I to so organize the world afterward to keep peaceful nations from being attacked by aggressor nations [R. 556]; (22) the statesmen failed when they did not restrain Mussolini in Ethiopia, the Japanese in Manchuria, and Hitler in Austria and Poland [R. 537]; (23) he is in favor of something on the order of the League of Nations [R. 537]; (24) by "east is east"

and "west is west" he meant that each nation has the right to live its own way as long as it doesn't aggress on the rights of others [R. 430]; (25) each people has a right to its own religion [R. 540]; (26) he would defend the United States wherever the United States flag flies [R. 541]; (27) he does want to see the end of the Hitler regime in Germany [R. 574]; (28) any expansion that Germany does must be by peaceful means, not by aggression [R. 575]; (29) he has never believed in expansion by other than peaceful means [R. 605]; (30) he is opposed to all dictatorship by force or aggression. [R. 605.]

E. The Questions Presented.

A. Did appellant obtain his Certificate of Naturalization on April 9, 1937 by fraud?

B. Did appellant obtain his Certificate of Naturalization on April 9, 1937 illegally?

C. Was appellant upon being granted citizenship thereafter entitled to enjoy all the constitutional rights and privileges of native born citizens?

D. Was appellant entitled to findings on his affirmative defenses?

III.

Statement of Errors Intended to be Urged.

A.

Statement of Points I, II, VII. [R. 28-30, Appendix p. 8.]

The trial court erred in holding that the following representations made by appellant in his petition were false and fraudulent:

1. That appellant was attached to the principles of the Constitution of the United States;

2. That it was appellant's intention to become a citizen of the United States and to renounce and abjure all allegiance and fidelity to any foreign prince, potentate; state and sovereignty, and particularly The German Reich.

B.

Statement of Point VIII. [R. 28-30; Appendix p. 9.]

The trial court erred in holding that appellant swore falsely and fraudulently when he took his oath of allegiance to the United States, in that

1. Appellant did not in fact intend to renounce and abjure all allegiance and fidelity to The German Reich;
2. Appellant did not intend to support the Constitution and laws of the United States against all enemies, foreign and domestic; and
3. Appellant took said oath with mental reservations and for the purpose of evasion.

C.

Statement of Point X. [R. 35; Appendix p. 9.]

The trial court erred in not granting appellant's motion for dismissal at the conclusion of appellee's case in chief.

D.

Statement of Point XI. [R. 35, Appendix, p. 9.]

The trial court erred in not making findings on appellant's first and second affirmative defenses.

ARGUMENT.

POINT I.

The Evidence Is Insufficient to Establish Fraud.

A. The Rule of Construction Which Obtains in a Denaturalization Proceeding Is Different Than in a Naturalization Proceeding.

Naturalization is a privilege. An alien has no inherent right to citizenship. (*Samras v. United States,* 125 F. (2d) 879 (C. C. A. 9th Cir.) Statutory requirements must be complied with, such as knowledge of the English language, good moral character, and attachment to the principles of the Constitution. [U. S. Code, Title 8, Sections 372, 379, 381, 382, 398, 399; Appendix, pp. 1-5.]

In a denaturalization proceeding the Court is examining a final court decree entered after opportunity to be heard. In such a proceeding the law and facts should be construed as far as is reasonably possible in favor of the citizen. (*Schneidermann v. United States,* 87 L. Ed. 1249, 1251.)

> "Citizenship, once bestowed upon proceedings in the federal courts should not lightly be taken away."
>
> *United States v. Woerndle,* 288 Fed. 4749 (C. C. A. 9th Cir.)

> "In suits of such character (fraud) the evidence must be clear, unequivocal, and convincing. United States v. Budd, 144 U. S. 154, 12 S. Ct. 575, 36 L. ed. 384; United States v. Knight (D. C.), 291 F. 129, affirmed (C. C. A.) 299 F. 571."
>
> *Tunlej v. United States,* 31 F. (2d) 696 (8th Cir.), dissent of Judge Booth at p. 699.

The burden of proof is on the Government and this burden must be met with evidence of a clear and convincing character that when citizenship was conferred upon the one from whom it is sought to take it away it was not done in accordance with strict legal requirements. A bare preponderance of the evidence which leaves the issue in doubt is insufficient. (*Schneidermann v. United States,* 87 L. ed. 1249, 1252.)

B. Fraud, to Justify a Court of Equity in Setting Aside a Judgment, Must be Extrinsic.

In general, fraud is deceit, trickery. It is deception deliberately practiced with a view to gaining an unlawful or unfair advantage. (Webster's International Dictionary (1929), p. 863.) As counsel stated in his argument to the trial court, it is "fooling" somebody. [R. 634.] The cases in which fraud has been discussed and defined are legion, as reference to digests and texts will show. (See 17 Words and Phrases, Permanent Edition, pp. 524-588.)

> "Fraud, indeed, in the sense of a court of equity, properly includes all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust or confidence, justly reposed, and are injurious to another, or by which an undue and unconscientious advantage is taken of another."
>
> *Moore v. Crawford,* 130 U. S. 122, 128, 32 L. ed. 878, 880, 9 S. Ct. 447.

Not every species of fraud will vitiate a judgment. Intrinsic fraud is not sufficient. It is easier to illustrate than to define; for example, forged documents presented or perjured testimony given in the trial of an action

constitute *intrinsic* fraud. (*Pico v. Cohn,* 91 Cal. 129, 133, 25 Am. St. Rep. 159, 13 L. R. A. 336, 25 Pac. 970, 27 Pac. 537; 15 *Cal. Jur.,* Sec. 123, p. 14.) This type of fraud can not be made the basis of an independent action in equity to set aside a judgment because it can be reached within the original action; if the Court has been mistaken in the law, there is a remedy by writ of error; if the jury has been mistaken in the facts or new evidence has been discovered since the trial, a motion for a new trial is an available remedy and will give appropriate relief. (*United States v. Throckmorton,* 98 U. S. 61, 65, 25 L. ed. 93, 95.)

Only *extrinsic* or *collateral* fraud, practiced by the prevailing party, and which has prevented a fair submission of the controversy, can serve as the basis for vitiating a judgment. Examples of extrinsic fraud are: "Keeping the unsuccessful party away from the court by a false promise of compromise or purposely keeping him in ignorance of the suit; or when an attorney fraudulently pretends to represent a party, and connives at his defeat, or, being regularly employed, corruptly sells out his client's interest." (*Pico v. Cohn, idem; United States v. Throckmorton, idem.*)

> "In all such instances the unsuccessful party is really prevented, by the fraudulent contrivance of his adversary from having a trial; but when he has a trial he must be prepared to meet and expose perjury then and there. He knows that a false claim can be supported in no other way. . . . The trial is his opportunity for making the truth appear. If, unfortunately, he fails, being overborne by perjured testimony, and if he likewise fails to show the injustice that has been done him on motion for a new

trial, and the judgment is affirmed on appeal, he is without remedy." (*Pico v. Cohn,* 91 Cal. 129, 134, 25 Am. St. Rep. 159, 13 L. R. A. 336, 25 Pac. 970, 27 Pac. 537.)

Thus where defendant was not served with process in compliance with the statute and a judgment was entered on such insufficient service and the defendant had no opportunity to defend equity will set the judgment aside. (*Kibbe v. Benson,* 17 Wall. 624, 743, 84 U. S. 741.)

C. The Evidence Is Wholly Insufficient to Establish Extrinsic or Any Fraud of Any Kind.

In the case at bar appellant has assumed that Congress "can constitutionally attach to the exercise of the judicial power under Article III of the Constitution, authority to re-examine a judgment granting a certificate of citizenship after that judgment has become final by exhaustion of the appellate process or by a failure to invoke it." (*Schneidermann v. United States,* 87 L. ed. 1249, 1252.) Appellant's reason for said assumption has not been due to a conviction that authority to so re-examine can constitutionally attach to the judicial power, but the fact that where such re-examinations have been had, the judgments of cancellation have been reviewed on appeal the same as any other judgments. There are many such cases in the reports but in none of the decisions examined by counsel has a case been found where the precise question was both raised and passed upon. (*United States v. Wusterbarth,* 249 F. 908 (D. C., New Jersey); *United States v. Tapolcsanyi,* 32 F. (2d) 385 (D. C., W. D.,

Pennsylvania); *United States v. De Tolna,* 27 F. (2d) 984 (D. C., E. D., New York); *Tunlej v. United States,* 31 F. (2d) 696 (C. C. A., 8th Cir.) *Maney v. United States,* 278 U. S. 17, 73 L. ed. 156.) The point is raised in the *Schneidermann* case but not considered. (87 L. ed. 1252.)

Appellant fully met every statutory requirement; he had lived in the United States more than five years immediately preceding the filing of his petition; he had lived continuously in the United States from the time of filing his petition up to the date of his admission to citizenship; he spoke English; he did not advocate the overthrow of government by force or violence nor was he affiliated with an organization which did; he was not a deserter from the army or navy during war nor a draft evader; he was a person of good moral character, and law abiding; he was attached to the principles of the Constitution of the United States (according to the testimony of representative citizens of his community) and well disposed to its good order and happiness. [U. S. Code, Title, 28, Secs. 372-394; Appendix, pp. 1-5.]

More than ninety days elapsed between the filing of his petition and its hearing in open court. The appellee had the right to appear, cross-examine appellant and his witnesses, to introduce evidence, oppose the petition and appeal from the decision granting appellant naturalization (Act of 1906, Secs. 5, 9, 11; U. S. Code, Title 28, Sec. 399; Appendix, p. 5.]

The evidence shows that the responsible officers of appellee, in charge of naturalization proceedings, had examined and questioned appellant in November, 1936. At that time appellant had gone the extreme limit in frankness. He had expressed his concern about being required to bear arms in an attack upon Germany. To defend the United States in an attack upon it by any nation, including Germany, he was willing to do. But to attack Germany—that, appellant found troublesome to his conscience.

Appellant, being an honest, frank and outspoken man, discussed this situation with appellee's officer who informed appellant that bearing arms included, if necessary, an attack on Germany. Before the interview concluded appellant stated he would bear arms without reservation and his frankness so impressed appellee's examiner, and his superior whose duty it was to finally pass upon naturalization petitions before sending them to the Court, that they approved his petition. Some three months later appellant appeared in open court and took his oath unreservedly.

That was in November, 1936 and April, 1937, respectively. One wonders when appellee charges "fraud" to appellant of what such fraud could possibly consist. Appellant did everything in his power to acquaint appellee with the precise state of his mind and heart. He was almost childlike in his frankness. His conduct is certainly not that of the trickster or deceiver who wanted citizenship for reasons he would not care to disclose. Such a person would have been exceedingly cautious about revealing his inmost thoughts.

Appellee knew all about appellant. Its officials made notes of interviews with appellant. Is appellant, five years later, to be penalized because the judge who admitted him to citizenship was not informed of the November, 1936 interview? What could appellant do about it in April, 1937? Appellee had all the facts; their officers were in charge of the proceedings; appellant complied with every requirement imposed by law; he answered freely and fully every question asked him; when appellant appeared in open court on April 9, 1937 he had done nothing to impose on appellee or the judge or anyone else. There certainly wasn't the slightest *extrinsic* fraud upon which to base an action in equity to set aside the decree admitting appellant to citizenship, a decree which had stood unchallenged for more than five years.

Nor was there intrinsic fraud. There isn't the slightest evidence to support any finding of fraud of any kind. Following appellant's admission to citizenship on April 9, 1937 he returned to his home and continued to live the same law abiding life that had characterized him since his arrival in Long Beach in the Spring of 1923. He stayed in the United States. He did business here. He paid taxes. He improved his own property and worked for neighborhood improvement. When war broke out he bought defense bonds to the amount of 15% of his net income, 5% more than the Government asks of its citizens. At no time after appellant received his Certificate of Naturalization did he evade any duty imposed upon him as a citizen.

POINT II.

The Evidence Is Wholly Insufficient to Establish That Appellant Obtained His Certificate of Naturalization Illegally.

The Court concludes that appellant obtained his Certificate of Naturalization *illegally*. [R. 30.] The findings are so general and so meager that it is difficult to know just what is meant by "illegally".

By a process of elimination the illegality must mean lack of attachment to the principles of the Constitution. This for the reason that any charge of illegality based upon failure to meet other requirements [such as, ability to speak, English, etc.—see Appendix] is patently absurd since the evidence is entirely without conflict on these matters. The opening statement of appellee's counsel also supports this view of what is meant by "illegally" because he stated that the contention of appellee was that appellant reserved allegiance to Germany and intended to return to Germany to live permanently. [R. 43.] The former is certainly a charge of lack of attachment.

In many respects this case is strikingly parallel to the *Schneidermann* case. There the government sought to turn the clock back twelve years; here it is five years. There what the defendant did or said as showing lack of attachment was *after* citizenship was granted; here the same is true. Appellant met every test of required conduct prior to his admission in April, 1937, not only

for the five year period immediately preceding that date, but for fourteen years prior thereto. On the basis of that conduct appellee was satisfied that appellant had met every requirement, including that of attachment, in full.

Now it is sought to re-examine that finding and by acts and utterances *subsequent* to naturalization to ascertain his state of mind on April 9, 1937 and to hold that the finding of attachment then made was erroneous. It must be borne in mind that what appellant did, after he was naturalized, was in the exercise of his rights as a citizen, not as an alien, and his conduct can fairly be judged only on that basis. Further, within two years after appellant became a citizen, great political issues developed in which all citizens, native and foreign born alike, became violent partisans of one side or the other. Political discussion was hot, bitter, and acrimonious, and citizens of both high and low estate in the heat thereof made remarks which offended not only those who differed with them but also the dictates of good taste. Then war came to this country and all sensible people, including appellant, forgot their differences and became unified in the defense of their country.

It is a difficult thing to ascertain the state of mind a person had on a certain date by recourse to what such a person *later* believes or does or says. That is one reason why memoirs written years after the events have occurred are not very trustworthy; the passage of time and the attendant change of perspective unconsciously colors the recitals.

The courts have recognized this as true. Thus where an alien had been admitted to citizenship in 1907, joined the I. W. W. in 1912, fomented strikes in 1917 during World War I, and was convicted of violation of the espionage act in 1918, these acts were held insufficient to justify a judgment of cancellation. The Court said that it was too conjectural to say that the joining of the I. W. W. in 1912, or the conviction in 1918, showed the citizen's state of mind in 1907. (*Rowan v. United States,* 18 F. (2d) 246 (C. C. A. 9th Cir.)

In *United States v. Woerndle,* 288 F. 47 (C. C. A. 9th Cir.) a decree refusing cancellation was upheld where the citizen, an attorney at law, was naturalized in 1904 and when Germany started World War I sympathized with her and was hostile to her enemies, bewailed her misfortunes and reverses, expressed hope for her ultimate victory, criticized the attitude of the administration and the people of the United States for their sympathy with Germany's enemies, but after the United States got into the war outwardly conducted himself as a loyal citizen, bought Liberty Bonds and contributed to the Y. M. C. A. and Red Cross, although his criticism of the President of the United States went "to the extreme limit of permissible criticism." In this case the citizen obtained a passport in his own name for a German Army Captain who desired to return to Germany in order to fight for her. This act was punishable as a felony. Yet the Court says that this act, rep-

rehensible as it was, did not indicate his mental attitude ten years before when he took the oath (pp. 48-49).

Some of these things appellant did, many he did not do. Appellant did criticize the President, he did express hostility to England, and he did oppose intervention; in common with millions of other Americans he was an ardent isolationist. All this he did before the war with no disloyal or criminal act of any kind committed by him. After the war he bought defense bonds and conducted himself as a loyal citizen. At no time did he have any contact with German or German-American activities; he neither joined nor attended German-American lodges, clubs, societies or bunds and he confined his reading to magazines, periodicals, and newspapers published in the English language. He was completely isolated, by his own voluntary act, from anything that was German or German-American, confining his real estate investments to Los Angeles County and his stock and bond purchases to American-owned and controlled companies.

Nothing was thought of it at the time. Police officer Graham, who visited him frequently, made no report of it to his department. He never made an official report to any government agency but did, in April, 1942, almost four months after the war commenced, answer questions asked of him by the Federal Bureau of Investigation.

That's a very good indication of what the officer thought of appellant's state of mind in the years fol-

lowing April 9, 1937. It was not only this officer's opportunity, but his duty, to apprise the law enforcement agency of which he was a member, of any disloyal conduct. It was only after war commenced that anyone gave the matter any thought and then the witch hunt started. Everything appellant had ever said was lifted out of its context and compared with Nazi party views as expressed by Hitler and his associates, whose writings appellant testified he had never read, his knowledge of European affairs having been derived solely from American publications. He said he had never read "Mein Kampf" either in German or English and that he had no sympathy with, and was bitterly opposed to, military aggression by Germany or any other nation. Yet he is blamed for everything these German leaders have said and done—that is to say, he is accused of approving them despite the fact that he testified that he did not approve them.

Certainly the examination and checking done by appellee in 1936 and 1937 resulting in the judicial finding that appellant was attached to the principles of the Constitution of the United States is to be taken as true in preference to a picture built up years later from political arguments appellant had with those who differed with him.

POINT III.

Appellant, After Being Admitted to Citizenship, Had the Constitutional Right to Exercise Freedom of Thought and Speech.

A. This Right Is Guaranteed to All Citizens by the First Amendment.

> "And though all the winds of doctrine were let loose, to play upon the earth, so Truth be in the field, we do injuriously, by licensing and prohibiting, misdoubt her strength. Let her and falsehood grapple. Whoever knew Truth put to the worse in a free and open encounter." (Milton, Areopagitica.)

The poet has here expressed the spirit of the American Constitution. Justice Holmes (dissenting in *United States v. Schwimmer*, 279 U. S. 644, 73 L. ed. 889, 893) expressed it thus:

> ". . . if there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought—not free thought for those who agree with us but freedom of the thought we hate."

It is stated thus by Justice Murphy:

> "The constitutional fathers, fresh from a revolution, did not forge a political straight-jacket for the generations to come. Instead they wrote Article V and the First Amendment, guaranteeing freedom of thought, soon followed." (*Schneidermann v. United States*, 87 L. ed. 1249, 1259.)

At the very first session of Congress under the Constitution it passed a resolution submitting twelve amendments to the Constitution. Two failed of passage, the remaining ten passed and comprise the so-called American Bill of Rights. These amendments were submitted and adopted because many of the states had ratified the Constitution on the tacit understanding that a Bill of Rights would be adopted if they ratified the Constitution. (Norton, the Constitution of the United States, Its Sources and Its Application, pp. 194-197.)

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."
>
> *Article I of Articles in Addition To, and Amendment Of, the Constitution of the United States of America.*

The way of the dissenter, religious, political, or otherwise, is always difficult. Time and again non-conformists have been hounded and punished because of their unpopular views. Repressive laws have been passed whose object and purpose was to deny to them a forum for the expression of their views. Uniformly the Courts have struck down these acts. One time it is a religious sect called "Jehovahs' Witnesses"; another time it is the Roman Catholic Church; another time it is the Communist or Anarchist; again it is a German Lutheran group teaching pupils in their schools the German language. (*Murdock v. Pennsylvania,* 87 L. ed. 827, 831, 834; *Jones v. Opelika,* 87 L. ed. 854; *Douglass v. Jeanette,* 87 L. ed.

855; *Martin v. Struthers*, 87 L. ed. 861; *Stromberg v. California*, 274 U. S. 357, 71 L. ed. 1095, 47 S. Ct. 641; *Pierce v. Society of Sisters of Holy Names*, 268 U. S. 510, 69 L. ed. 1070; *Meyer v. Nebraska*, 262 U. S. 390, 67 L. ed. 1042.)

The ostensible reasons given for repressive legislation are always noble or laudable, such as to keep people from being disturbed in their homes, to protect them from unpatriotic influences, to protect their health. The reasons given are never the real ones—the real ones have their basis in the unwillingness to grant freedom of thought and freedom of speech "for the thought we hate" and to punish those who insist upon exercising their right of free speech for such "hateful" thoughts.

Appellant exercised his right of free thought and free speech. He did so with vigor but probably also with considerable lack of tact. There is no reason why, prior to December 7, 1941, as an American citizen, he could not favor Germany in her war with England and still be a loyal American. Long before the United States became involved in the war citizens freely solicited funds for "Greek Relief", "Bundles for Britain", and the like. That was permissible. Had appellant been partial to England at this period nothing would ever have come of his partisanship. It was the popular side, yet many who favored England to defeat Germany still were opposed to intervention in her behalf by the United States.

Appellant was an ardent isolationist. He had lots of company with millions of Americans, both of high and low estate. He had a right to advocate isolationism. He had a right to deliver isolationist pamphlets. He had a right to criticize the policies and conduct of our govern-

ment and to criticize President Roosevelt. He denies ever making the profane reference to the President attributed to him on two occasions. If he made the statement it was improper and in exceeding bad taste, but it would not justify a cancellation of his citizenship. The isolationist-interventionist campaign was acrimonious, people were aroused, pro and con, by the third term candidacy of the President. These years 1939-1941 were trying years with great political issues engaging the intense interest of the American people.

One member of Congress so far forgot himself as to call the President a maniac. [R. 516.] That was certainly improper and doubtless the one who made it has since regretted the intemperate remark.

The F. B. I. statement (Government's Exhibit No. 2) in no wise furnishes a basis for cancellation. In it appellant expressed views worthy of a more qualified scholar on world affairs. Shall the German people be destroyed at the conclusion of this war? Appellant says not. Shall they, and other people oppressed by dictatorship be helped? The United States Government apparently thinks so because as our military forces conquer these lands the promise of aid and help to their people has been promised and doubtless given.

Has Hitler done any good? Is colonization productive of war? Must there be a world order capable of peaceably solving problems of increasing populations if war is to be prevented? No one knows the complete answers to any of these problems. Appellant gave his frankly and fully and in many of his answers many of us will discover that they are somewhat similar to our own views. To really know the right answers to these perplexing

problems we would be obliged to have more wisdom than any mortal has. History will give us the answer, but none of us now living will be here to get it. There is a job to do now, there are answers to find now, and we hope, by the interchange of conflicting opinions, to find the best possible *present* answers to *present* problems.

Appellant had a right to his opinions—none of them are of a subversive or disloyal nature, but many are now unpopular.

It must not be overlooked that appellant was supported in his contention that he was, and is, a good citizen by representative people. Old time neighbors, a dentist, a former city attorney, a woman widowed by the war, a gardener, and many others, testified to his devotion to American ideals, his civic mindedness, his pride in his citizenship, and his intention to leave his estate to public agencies. They are surely entitled to more credence than the ones who testified against him. Some of them in an acquaintance of ten and fifteen years could recall but a remark or two—and these made between three and four years after he was admitted to citizenship. It is surpassing strange that in these long acquaintanceships these witnesses could recall so little to criticize.

It is impossible to review all of the evidence. To do so would transcend all reasonable limitations on the size of a brief. The evidence has been summarized, to the best of counsel's ability, in what he hopes is a fair, accurate, and complete manner. (Statement of Facts, *infra.*) A review of it will, appellant believes, show that his conduct at all times was proper and consonant with his rights and duties as a citizen.

POINT IV.

Appellant Was Entitled to a Judgment of Dismissal at the Close of Appellee's Case in Chief.

The charge of fraud and illegality was not established at the close of appellee's case in chief. Appellee's officials knew all about appellant's views. He had frankly discussed these with them. There was just the reverse of fraud.

As to lack of attachment all the testimony, except one witness (Haschke) was *after* admission to citizenship. The real test was in the statutory period *prior* to April 9, 1937, the day on which appellant was admitted.

The remarks testified to after appellant became a citizen were legally permissible. He committed no overt act. There was no testimony that appellant was other than law abiding. Appellee had not presented evidence of a clear, unequivocal character—or any at all, in fact—of appellant's lack of attachment to the Constitution of the United States. Appellant was therefore entitled to a dismissal of the action.

POINT V.

Appellant Was Entitled to Findings on His Affirmative Defenses.

It was the duty of the trial court to make complete findings of fact upon all of the issues. (*Blockton Cahaba Coal Co. v. United States,* 24 Fed. (2d) 180; *Ripley v. United States,* 220 U. S. 491. 55 L. ed. 557, and 222 U. S. 144, 56 L. ed. 131.)

The findings in this case are very general. They are but the most general conclusions of ultimate fact.

(*Schneidermann v. United States,* 87 L. ed. 1249, 1256.) Under the peculiar circumstances of this case, where the charge of fraud and illegality were so general, appellant found it necessary to set forth affirmatively his good conduct, his activities both as a resident and citizen, and his political philosophy.

That this was so indicated by the type of some of the evidence that appellee introduced. For example, among other things, there were attempts, all abortive, to prove that (1) appellant intended to live in Germany permanently, (2) that he had sent large sums of money to Germany and (3) that he was a former German officer and had fought for Germany in World War I. The recitals in appellant's affirmative defenses completely negative these, and other, charges, made in the evidence. Appellant was entitled to findings on these defenses in view of the wide field afforded appellee in trying to prove, in 1942, what appellant's state of mind was on April 9, 1937.

Conclusion.

Appellant respectfully submits that the decree cancelling his citizenship should be reversed and appellant restored to his status as a citizen.

Respectfully submitted,

WALHFRED JACOBSON,

Attorney for Appellant.

APPENDIX.

Statutes.

Naturalization Proceedings in General.

United States Code, Title 8:

"§372. Proceedings for naturalization. An alien may be admitted to become a citizen of the United States in the manner indicated under sections 372 to 394 of this title and not otherwise." (June 29, 1906, c. 3592, §4, 34 Stat. 596.)

"§373. Declaration of intention. He shall declare on oath before the clerk of any court authorized to naturalize aliens, or his authorized deputy, in the district in which such alien resides, two years at least prior to his admission, and after he has reached the age of eighteen years, that it is bona fide his intention to become a citizen of the United States and to reside permanently therein, and that he will, before being admitted to citizenship, renounce forever all allegiance and fidelity to any foreign prince, potentate, State, or sovereignty, and particularly, by name, to the prince, potentate, State or sovereignty of which the alien may be at the time of admission a citizen or subject. Such declaration shall set forth the name, age, occupation, personal description, place of birth, last foreign residence, the date of arrival, the name of the vessel, if any, in which he came to the United States, and the present place of residence in the United States of said alien. No declaration of intention or petition shall be made outside of the office of the clerk of court." (June 29, 1906, c. 3592, §4, 34 Stat. 596; Mar. 4, 1929, c. 683, §1, 45 Stat. 1545.)

"§379. Petition for naturalization; when required to be filed; allegations; verification by citizen witnesses. Not less than two years nor more than seven years after he has made such declaration of intention he shall make and file, in duplicate, a petition in writing, signed by the applicant in his own handwriting and duly verified, in which petition applicant shall state his full name, his place of residence (by street and number, if possible), his occupation, and, if possible, the date and place of his birth; the place from which be emigrated, and the date and place of his arrival in the United States, and, if he entered through a port, the name of the vessel on which he arrived; the time when and the place and name of the court where he declared his intention to become a citizen of the United States; if he is married he shall state the name of his wife and, if possible, the country of her nativity and her place of residence at the time of filing his petition; and if he has children, the name, date, and place of birth and place of residence of each child living at the time of the filing of his petition: *Provided,* That if he has filed his declaration before June 29, 1906, he shall not be required to sign the petition in his own handwriting.

The petition shall set forth that he is not a disbeliever in or opposed to organized government, or a member of or affiliated with any organization or body of persons teaching disbelief in or opposed to organized government, a polygamist or believer in the practice of polygamy, and that it is his intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name to the prince, potentate, state, or sovereignty of which he at

the time of filing of his petition may be a citizen or subject, and that it is his intention to reside permanently within the United States, and whether or not he has been denied admission as a citizen of the United States, and, if denied, the ground or grounds of such denial, the court or courts in which such decision was rendered, and that the cause for such denial has since been cured or removed, and every fact material to his naturalization and required to be proved upon the final hearing of his application.

As to each period of residence at any place in the county where the petitioner resides at the time of filing his petition, there shall be included in the petition the affidavits of at least two credible witnesses, citizens of the United States, stating that each has personally known the petitioner to have been a resident at such place for such period, and that the petitioner is and during all such period has been a person of good moral character." (June 29, 1906, c. 3592, §4, 34 Stat. 596; Mar. 2, 1929, c. 536, §6(a), 45 Stat. 1513.)

"§381. Oath renouncing foreign allegiance and to support Constitution and laws. He shall, before he is admitted to citizenship, declare on oath in open court that he will support the Constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name to the prince, potentate, state, or sovereignty of which he was before a citizen or subject; that he will support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same." (June 29, 1906, c. 3592, §4, 34 Stat. 596.)

"§382. Prerequisites to admission to citizenship; residence; character; attachment to principles of Constitution; proof. No alien shall be admitted to citizenship unless (1) immediately preceding the date of his petition the alien has resided continuously within the United States for at least five years and within the county where the petitioner resided at the time of filing his petition for at least six months, (2) he has resided continuously within the United States from the date of his petition up to the time of his admission to citizenship, and (3) during all the periods referred to in this section he has behaved as a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States. At the hearing of the petition, residence in the county where the petitioner resides at the time of filing his petition, and the other qualifications required by this section during such residence, shall be proved by the oral testimony of at least two credible witnesses, citizens of the United States, in addition to the affidavits required by section 379 of this title to be included in the petition. If the petitioner has resided in two or more places in such county and for this reason two witnesses cannot be procured to testify as to all such residence, it may be proved by the oral testimony of two such witnesses for each such place of residence, in addition to the affidavits required by section 379 of this title to be included in the petition. At the hearing, residence within the United States but outside the county, and the

other qualifications required by this section during such residence shall be proved either by depositions made before a naturalization examiner or by the oral testimony of at least two such witnesses for each place of residence.

* * * * * * * * *"

(June 29, 1906, c. 3592, §4, 34 Stat. 596; Mar. 2, 1929, c. 536, §6(b), 45 Stat. 1513.)

"§398. Final hearings to be in open court." (June 29, 1906, c. 3592, §9, 34 Stat. 599.)

"§399. The United States shall have the right to appear before any court or courts exercising jurisdiction in naturalization proceedings for the purpose of cross-examining the petitioner and the witnesses produced in support of his petition concerning any matter touching or in any way affecting his right to admission to citizenship, and shall have the right to call witnesses, produce evidence, and be heard in opposition to the granting of any petition in naturalization proceedings." (June 29, 1906, c. 3592, §11, 34 Stat. 599.)

Denaturalization Proceedings.

"§738. Revocation of naturalization.

(a) It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 701 in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of

revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground of fraud or on the ground that such order and certificate of naturalization were illegally procured.

(b) * * *

(c) * * *

(d) * * *

(e) * * *

(f) * * *

(g) * * *" (Section 338 of the Nationality Code, Oct. 14, 1940, c. 876, Title I, Subchap. III, §338, 54 Stat. 1158, U. S. Code, Title 8, Sec. 738.)

"§701. Jurisdiction to naturalize.

(a) Exclusive jurisdiction to naturalize persons as citizens of the United States is hereby conferred upon the following specified courts: District Courts of the United States now existing.....in any state..... The jurisdiction of all the courts herein specified to naturalize persons shall extend only to such persons resident within the respective jurisdiction of such courts.....

(b) * * *

(c) * * *

(d) * * *" (Oct. 14, 1940, c. 876, Title I, Subchap. III, §301, 54 Stat. 1140, U. S. Code, Title 8, Sec. 701.)

Appeals.

"§225. (Judicial Code, section 128, amended.) Appellate Jurisdiction.

(a) *Review of final decisions.* The circuit courts of appeal shall have appellate jurisdiction to review by appeal or writ of error final decisions—

First. In the district courts.....

* * * * * * * * *

(d) *Circuits in which reviews shall be had.* The review under this section shall be in the following circuit court of appeals: The decisions of a district court of the United States within a State in the circuit court of appeals for the circuit embracing such State.....

* * * * * * * * *"

(U. S. Code, Title 28, Sec. 225.)

"§230. Time for making application for appeal on writ of error. No writ of error or appeal intended to bring any judgment or decree before a circuit court of appeals for review shall be allowed unless application therefor be duly made within three months after the entry of such judgment or decree." (U. S. Code, Title 28, Sec. 230; Mar. 3, 1891, c. 517, §11, 26 Stat. 829; Feb. 13, 1925, c. 229, §8[c]. 43 Stat. 940.)

"§211. (Judicial Code, section 116.) Circuits. There shall be ten judicial circuits of the United States, constituted as follows:

* * * * * * * * *

Ninth. The ninth circuit shall include the districts of California, Oregon, Nevada, Washington, Idaho, Montana, Hawaii, and Arizona." (U. S. Code, Title 28, Sec. 211.)

Statement of Points on Which Appellant Intends to Rely on Appeal.

I. That the District Court erred in holding as a matter of law that defendant was guilty of fraud through concealment in obtaining his certificate of naturalization, the evidence being conclusively that defendant made a full and frank disclosure to the naturalization officers.

II. That the District Court erred in holding as a matter of fact that defendant was guilty of concealing his state of mind, the evidence conclusively showing an entire absence of concealment on the part of defendant.

III. That the District Court erred in holding that defendant upheld the cause and governmental philosophies of Germany.

IV. That the District Court erred in attributing to defendant, a man of ordinary education, profound philosophical ideologies and geo-political concepts upon the basis of defendant's statements that the world admired German science and commerce and that he was disappointed at the failure of the Caucasion nations after the last war to create a world order along league of nation's ideas.

V. That the District Court erred in holding that defendant refused to bear arms against Germany.

VI. That the District Court erred in holding that the Court was not fully informed of defendant's answers to questions in his naturalization application, the testimony of a government witness being that the Court had personally questioned defendant prior to the granting of citizenship to defendant.

VII. That the District Court erred in holding that defendant was not in fact attached to the principles of the Constitution of the United States.

VIII. That the District Court erred in holding that defendant swore falsely when he took the oath of renunciation and allegiance.

IX. That the District Court erred in holding that defendant repeatedly protested his allegiance to Germany.

X. That the District Court erred in not granting defendant's motion for dismissal after the conclusion of the plaintiff's case in chief.

XI. That the District Court erred in not making findings on defendant's First and Second affirmative defenses.

XII. That the District Court erred in holding that Certificate of Naturalization No. 4262178 was subject to cancellation and in ordering said certificate cancelled.

XIII. That the findings and conclusions of law and decree of cancellation are not supported by a preponderance of the evidence.

XIV. That defendant was prevented from receiving a fair trial by many circumstances of a prejudicial nature. One such circumstance was that the Court which heard the case had theretofore granted defendant's petition for naturalization and, in doing so, had apparently overlooked certain matters contained in defendant's petition and which matters the Court held established defendant's alleged fraud. Another such circumstance was the identifying of defendant's testimony with speeches and writings of German leaders, with which speeches and writings defendant was not familiar. Another circumstance was the general atmosphere of prejudice toward a person of German descent accused, during war times, of disloyalty to the United States. This condition affected the Court, though probably not consciously. [R. 33-36.]

Testimony of Bruce G. Barber.

(Portion Thereof)

"The Clerk: Please state your name.

The Witness: Bruce G. Barber.

Direct Examination.

By Mr. Dean:

Q. Mr. Barber, what is your occupation? A. I am a district law officer in the Immigration and Naturalization Service, Los Angeles.

Q. How long have you been so associated, Mr. Barber? A. I have been in the service 17 years.

Q. The Immigration and Naturalization Service? A. Yes, sir.

Q. Mr. Barber, your title is district law officer. Is that correct? A. Yes, sir.

Q. And prior to the assumption of your duties as district law officer, has it been your duty to take statements from individuals who petition for citizenship in the United States? A. Yes, it has.

Q. In that connection did you take a statement from the defendant in this case, Friedrich Walter Bergmann? A. Yes, I did.

Q. Do you recall approximately when that statement was taken? A. Yes, it was in November of 1936.

Q. Where was the statement taken, Mr. Barber? A. In the Immigration and Naturalization Service office in Los Angeles.

Mr. Jacobson: Will you give me the date again, please?

The Witness: November, 1936.

Q. What were the circumstances surrounding the hearing or the interview you had at that time? A. At that time Mr. Bergmann appeared with his two witnesses to file his petition for naturalization, and I was the naturalization examiner who took the preliminary statement from him, preliminary to his filing his petition.

Q. You mentioned the term "application." Was that application made on some sort of a document or was it merely verbal? A. The petitioner, or Mr. Bergmann, had filled out a form which is a preliminary petition for naturalization, and that had been submitted to the Service. At the time he came to file his petition, his answers given on that form which are numbered questions were checked by me under oath.

Mr. Dean: I see.

Your Honor, as soon as counsel has had time to examine the document I will present it to Mr. Barber.

Mr. Howser: Thank you, counsel. (Passing document to Mr. Dean.)

Q. By Mr. Dean: Mr. Barber, I show you what appears to be a preliminary form or petition for naturalization, No. 23-29—and the paper is torn so that I can't see the next digit; the finishing two digits being 24 with a stamp on it bearing the date of September 5, 1936, 'Received District Office Los Angeles,' and ask you if you have seen that document before? A. Yes, I have.

Q. Is this the document that you saw at the time Mr. Bergmann appeared for an interview at your office? A. Yes, that is correct.

Q. With respect to the writing in black ink on the first and second pages of the document, do you know in whose handwriting that is?

Mr. Jacobson: Do you want a stipulation, Mr. Dean? That is the petition signed by my client. He said that is the one he signed and filled out.

Unless there is some endorsement by the Government, of course—

Mr. Dean: I think I will bring that out in the course of this questioning. Thank you, Mr. Jacobson.

Mr. Jacobson: All right.

Q. By Mr. Dean: With reference to the handwriting on the first two pages, is that in your handwriting? A. The corrections made are in my handwriting.

Q. Now, directing your attention to Question No. 26 which reads, "If necessary, are you willing to take up arms in defense of this country?" Was the answer to that question given in your presence on this occasion? A. Yes, Mr. Bergmann was asked this question over again.

Q. By you? A. By me.

Q. I see. A. And he—

Q. Why was he asked the question over again? A. Because there appeared some entry there which looked to be 'No' that had been crossed out before the form had been sent in to our office.

Q. In other words, it appeared to you that the question had been answered 'No.' Is that right? A. Yes, that is right.

Q. What followed subsequent to the discovery of 'No' in response to that question? A. When I asked Mr. Bergmann the question, I asked him whether he

had any objections to bearing arms in defense of the United States, and he said, 'No,' he didn't; but he wouldn't bear arms in an attack upon Germany.

I asked him if he could not take the oath unqualifiedly, and he said he couldn't. He said he wanted that qualification put in there, and I wrote the qualification in here in pen and ink.

Q. His qualification? A. Yes. That follows his answer to Question No. 26.

Q. Yes.

The Court: May I see that?

The Witness: Certainly. (Passing document to the Court.)

The Court: All right.

Mr. Dean: Will you read the last answer, please?

The Court: You are going to offer that as it is? Have you a photostat of it, Mr. Dean?

Mr. Dean: I don't have a photostatic copy, no. Do you, Mr. Barber?

The Court: This is very important.

Mr. Dean: May I ask leave to have it photostated after it is offered?

The Court: Yes. This is very important because it is in the handwriting of the person.

Mr. Dean: With leave of the Court, I will have this photostated.

The Court: You had better mark it as an exhibit and withdraw it on substitution of a copy.

Q. By Mr. Dean: Mr. Barber, with reference to that, will you continue to explain what transpired subsequent to your questioning of Mr. Bergmann? A. There

are several questions following Question No. 26, and by the time I had checked off the rest of the questions, Mr. Bergmann then said he wanted to withdraw the statement that he would not be willing to take up arms in an attack upon Germany, so I ran a line through that crossing it out.

Q. Where does that line appear on this document? A. Following Question No. 26.

Q. And above the word 'No'? A. And above the word 'No' following the next sub-question under No. 26.

Q. Did you have any further conversation concerning that question, of that inquiry? A. Yes, I had quite a little conversation with him at that time.

Q. Do you recall what the conversation was at that time? A. I asked him whether or not his objections to bearing arms was based upon a religious idea, or whether it was his love of Germany.

Q. Did he reply to that? A. He said that it would be hard for him to bear arms in an attack upon Germany, but that his objection was not because of any religious scruples.

Mr. Dean: Mr. Jacobson and Mr. Howser, I understand you are willing to stipulate the signature on this document is that of the defendant, Friedrich Walter Bergmann. Is that correct?

Mr. Jacobson: So stipulated.

Mr. Dean: I offer this as Government's first exhibit, Your Honor.

The Clerk: Exhibit 1.

The Court: It may be received."

(The petition referred to was received in evidence and marked Plaintiff's Exhibit No. 1.) [R. 221-226.]

"Cross-Examination

By Mr. Jacobson:

Q. Were there any subsequent interviews between yourself and Mr. Bergmann in connection with his request for naturalization? A. No, there were not; not that I recall." [R. 231.]

"The Court: In whose handwriting is the sentence that is stricken out?

The Witness: That sentence is in my handwriting.

The Court: The word 'yes' is in his handwriting?

The Witness: Yes, that is correct, Your Honor. The word 'yes' was written by the petitioner.

The Court: Then he, or rather, you put in the qualification when he gave it to you?

The Witness: That is right." [R. 617-618.]

No. 10387.

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

FRIEDRICH WALTER BERGMANN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

BRIEF FOR THE UNITED STATES OF AMERICA.

FILED
SEP 30 1943
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No. 10387.

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

FRIEDRICH WALTER BERGMANN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

BRIEF FOR THE UNITED STATES OF AMERICA.

Opinion Below.

The reported Opinion of the District Court appears in 47 F. Supp. 765, and its Findings of Fact and Conclusions of Law appear in the Record, pages 27-31.

Jurisdiction.

Judgment of the District Court in the above case here on appeal was entered November 30, 1942 [R. 32]. The jurisdiction of this court rests upon Section 128 of the Judicial Code, 28 U. S. C. A. (1940 ed.), 225.

Judgment in the District Court and the Statute Under Which the Judgment Was Entered.

The judgment of the District Court from which this appeal is taken orders the cancellation of appellant's certificate of naturalization. This judgment was entered in

an action instituted by the United States of America under Section 338 of the Nationality Act of 1940, 54 Stat. 1158 (U. S. C. A., Title 8, Section 738). This Act and Section confers jurisdiction upon the District Courts to entertain proceedings for cancellation of certificates of naturalization alleged to have been obtained by fraud or illegality.

The Opinion of the District Court.

The District Court held that appellant's certificate of naturalization had been obtained by fraud and ordered appellant's certificate of naturalization cancelled. The fraud consisted in the fact "that when appellant was admitted to citizenship on April 9, 1937, he was not attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States; and that appellant swore falsely when he took the oath of renunciation and allegiance, for he bore no fealty to the United States and did not renounce allegiance and fidelity to The German Reich."

Findings of Fact.

The court, sitting as a Court of Equity, found: Appellant upon taking the oath of allegiance[1] on April 9, 1937, was granted Certificate of Naturalization No. 4262178 on the same day, and it was issued by the Clerk; that the appellant upon taking such oath was, by order of the

[1]"I hereby declare on oath that I absolutely and entirely renounce and adjure any allegiance and fidelity to foreign prince, potentate, state or sovereignty, and particularly to The German Reich of which I have heretofore been a citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies foreign and domestic; that I will bear true faith and allegiance to same; and that I take this obligation freely without any mental reservation or purpose of evasion: So Help Me God.

"In acknowledgment whereof I have hereunto affixed my signature."

court, admitted to citizenship [R. 28-29]; that the representations made by appellant in his petition for naturalization that he was attached to the principles of the Constitution at the time of the filing of the petition were false and fraudulent in that the appellant was not in fact attached to the principles of the Constitution, and that the representations made in his petition for naturalization at the time of its filing that he intended to renounce absolutely and forever all allegiance and fidelity to The German Reich were false and fraudulent in that he did not intend so to do [R. 29]; that the representations made by appellant in his oath of allegiance that he intended to renounce and abjure all allegiance and fidelity to The German Reich were false and fraudulent in that he did not in fact so intend; that the representations made by appellant in his oath of allegiance that he intended to support the Constitution and the laws of the United States against all enemies foreign and domestic were false and fraudulent in that he did not so intend; and that the representations made by appellant in his oath of allegiance that the oath was taken without any mental reservation or purpose of evasion was false and fraudulent in that he did take the oath with such mental reservation and purpose of evasion [R. 30].

Questions Presented.

1. Whether there is substantial evidence to support the finding of the trial court that the defendant procured his certificate of naturalization by fraud.

2. Whether the fraud disclosed by the evidence is fraud within the meaning of Section 338 of the Nationality Act of 1940.

ARGUMENT.

I.

The Appellate Court Will Not Set Aside the Findings of the Trial Court in an Equity Proceeding if the Findings Are Predicated Upon Conflicting Testimony Given in Open Court, as Such Findings Are Presumptively Correct, Unless a Serious Mistake of Fact or Law Appears.

The entire case of the Government is based upon written statements of the defendant and one other witness, and oral testimony given in open court. The trial court, therefore, had the benefit of the witnesses personally appearing before it.

Rule 52(a), F. R. C. P.;

Oregon Mortgage Company v. Renner, 96 F. (2d) 429 (9th Cir.);

Clements v. Coppin, 61 F. (2d) p. 557;

U. S. v. United Shoe Mach. Co., 247 U. S. 32;

Why Corp. v. Super Ironer Corp., 128 F. (2d) 540.

II.

The Evidence Amply Sustains the Findings of Fact Made by the Trial Court.

The Government's case and the trial court's findings are based upon testimony of positive action and declarations of appellant, the sum total thereof not only sustaining but compelling the conclusion that appellant was not attached to the principles of the Constitution and well-disposed to the good order and happiness of the United States and that appellant swore falsely when he took the oath of renunciation and allegiance. Such is fraud within the meaning of the Nationality Act of 1940, Section 338, 54 Stat. 1158, U. S. C. A. Title 8, Section 738; *Maney v. U. S.,* 278 U. S. 17; *U. S. v. Ness,* 245 U. S. 319. The case for the defense primarily, as it must, rests upon negative, not positive, evidence.

Government's Documentary Evidence.

This consists of Government's Exhibits 1, 2, 3 and 4, being respectively Petition or Application for Naturalization, Statement of Appellant of May 5, 1942, Statement of Mrs. Charlotte Miller of April 20, 1942, and a letter dated June 7, 1939, by the appellant to Rollin J. McKinney.

In so far as the Petition for Naturalization is concerned, Question No. 26 therein is as follows:

> "If necessary, are you willing to take up arms in defense of this country?" [R. 227.]

It is to be noted from the testimony of Mr. Barber [R. 222-226] that under the word "Yes" in answer to Question No. 26, is an ink mark of some kind. There were only the word yes and the ink mark on the line left for the answer to Question No. 26 when presented to Mr. Barber, the Immigration official. This ink mark under the word "Yes" caused Mr. Barber to question the answer and on being informed that the appellant was not willing to take up arms in an attack upon Germany and desired that qualification to be included in his answer to Question No. 26, it was thereupon inserted in Mr. Barber's handwriting as part of such answer, Mr. Barber at such time advised the appellant that such a reservation would prevent his being admitted to citizenship [R. 618] and thereafter continued the examination of the appellant for approximately fifteen minutes, at the end of which time appellant stated that he did not wish the qualification to be a part of his answer to Question No. 26 [R. 225].

As to Government's Exhibit No. 2, statement of appellant, signed May 5, 1942, particular attention is directed to the following:

> "I am disguested with the white man for getting into this war. The white people should realize that east is east, and west is west, and north is north, and south is south; they should not go beyond their rights. Whites should attend their own business [R. 249] * * * As an American citizen, I would defend this country wherever the United States flag flies. It is not correct to be sent outside the borders of the United States to fight under a foreign flag. I want to see the end of the Hitler regime in Germany. I

want to see Hitler licked, but not the German people. I have a heart for the German people. There must always be a Germany. A country of 80 million people has a right to have land enough to sustain them. The colonies she once possessed were nothing but barren and desert land, with the possible exception of German East Africa. Germany should never be split up; it will lead only to political unrest and war in Germany. We are fighting Hitler and not the German people. All American citizens have a duty after the war to help Germany and other countries oppressed by dictators." [R. 250.]

At this point we particularly desire to call to the court's attention the examination of the appellant by the trial judge [R. 589], that the term "Heil Hitler" is never used by even the Nazis in foreign countries as a greeting, and the obvious discrepancy between the appellant's statement that east is east, and west is west, * * * and that white people should realize that fact and should not go beyond their rights, and * * * should attend to their own business, and his subsequent statements that a country of 80 million people (referring to Germany) should have the right to have land enough to sustain them [R. 573-581].

The statement of Mrs. Charlotte Miller requires no comment [R. 611].

Government's Exhibit 4, being the letter of June 7, 1939, signed by appellant, is diametric to the protestations of appellant that he intended making public gifts [R. 583-586].

Summation of Oral Declarations by Appellant to Sustain the Lower Court's Findings.

As early as 1929 [R. 210], the defendant claimed to have served in the German Army in World War I; and in 1936 [R. 214] defendant stated the United States would be sorry if she interferred with Germany, and that he had sent his money first to Canada, then to Australia for protection. He reiterated the statement as to being in the German Army to five other witnesses [R. 44; 102; 117; 149; 161] during the period 1940-1941, to two of whom he amplified his statement by stating that he wanted to fight for Germany again [R. 102; 159].

In April, 1939 the appellant advised Mrs. Pelliter [R. 61] not to buy United States bonds nor invest any money in them at all (this was stated on several succeeding days); that such bonds were not safe.

In 1940 appellant stated [R. 98] that he felt like going back to Germany and helping whip England. During this year he likewise stated that Hitler was O. K. and could run the United States Government better than it was then being run, and that Hitler could have everything he needed from Bergmann, and that if Hitler came over here, he would show us how to run the Government, and that he, Bergmann, was Hitler, Junior, or Hitler No. 2; that he intended to sell his property, and after the trouble he would get rid of what he had here and go back to the old country and live like a white man [R. 112-115, 119, 546]; that he sent $1,500 to Germany; that that s.—b.—— Roosevelt would get his, and that when the United States was taken over, things could be regulated, and that at the right time Germany would easily take over, and that the system of government in Germany was better than in

the United States; and that this g.—d.—— religion would have to go [R. 135-137]; that he believed Hitler to be O. K. and misrepresented by the press and the Jews; that Germany after the war would be the clearing house for world goods, and would determine and fix the quotas and needs of other countries; that Hitler in reality was a good, kind, Christian gentleman, not wanting to harm anybody, only wanting to do good [R. 174-175].

During this period he stated to a still further witness that Hitler was a wonderful man, and the greatest genius to mankind the world had ever known, and would go down in history as such [R. 183].

In 1941 appellant attacked the present administration stating he did not like the Jewish influence on the administration; had in his possession a photograph of a damaged British warship in New York Harbor, the photograph having been received from the German Consul; expressed admiration for Hitler as a very great man with fine principles, and declared admiration for Nazi principles; gave typical Nazi salute and said "Heil Hitler;" [R. 44-48; 147-151], and that Hitler was doing a great work [R. 155], and that after this thing was all over, the Germans would really have the world at their feet [R. 150].

To another witness, during this same period, appellant stated that he was a Nazi; that he was opposed to lend-lease to Great Britain, thought the Japanese nice people and that they had to attack the United States; that Americans misunderstood Hitler who was a very nice man [R. 74-79].

To two witnesses he stated, during this period, that we —Hitler—will use gas; and that he was going back to Germany as soon as the war ended, and was going to stay there [R. 91-92, 212].

Appellant *admits* that he stated, as testified to by witnesses, that he used the words, "I am a Nazi." [R. 493.]

In 1941 appellant stated that Hitler's plan for the world was a good one; likewise his plan for the Jews; that they should be run out as they were getting control [R. 159], and that he was ashamed of his United States citizenship and felt like having it cancelled; that it was no worse for Germany to kill children than was the Versailles Treaty [R. 125].

During this same period, 1941, he stated that Roosevelt was a dirty, double-crossing s. b.; that he had double-crossed the German people and sold them out when he passed the lend-lease bill permitting England to obtain goods from this country [R. 184]; that he had his citizenship papers taken out as a business protection [R. 185], that he would bless the date when he could tear them up and return to Germany to live like a white man [R. 186]. He did not think the Japanese attack at Pearl Harbor was a shady deal, that it was inevitable; that they were entitled to own the islands and territory in that portion of the country, and that this government had stolen the Philippine Islands from the Spanish Government, and that rightfully that portion of the world belonged to the yellow race and he was glad to see them take it [R. 186-187].

He expressed jubilation at the sinking of the battleships REPULSE and PRINCE OF WALES, explaining the tonnage of these ships, the amounts and sizes of the guns they carried, and the crews [R. 193]. He *admits* he stated Hitler was O. K. and was more capable of running the government than the way our government functions at this time [R. 546]. Appellant *admits* he does not want the German people defeated [R. 541].

Effect of Decision in U. S. v. Schneiderman, 87 L. Ed. 1249, on Instant Case.

The Seventh Circuit in *U. S. v. Krause,* decided June 30, 1943, in referring to the *Schneiderman* decision says:

> "* * * There the majority of the Court held that the Government had not sustained the burden of proving that Schneiderman was not attached to the principles of the Constitution of the United States when his certificate of citizenship issued, ruling that very active membership and participation in an organization alleged but not admitted by the majority of the members of the Court to advocate the overthrow of the Government by force and violence did not constitute such opposition to the principles of the Constitution as to justify holding that a member could not truthfully take the oath to uphold the principles of that Constitution. It stresses the fact that the Government relied solely upon evidence relating to the Party, and introduced none as to Schneiderman himself apart from his party activities. 'Apart from his membership in the League and the Party the record is barren of any conduct or statement on petitioner's part which indicates in the slightest that he believed in and advocated the employment of force and violence, instead of peaceful persuasion, as a means of attaining political ends.' The Court recognizes that citizenship can be revoked 'on legal grounds,' thereby upholding the validity of section 15, 8 U. S. C. A. section 738, which provides for such revocation. It assumes without deciding 'that * * * a certificate of naturalization can be set aside under section 15 as "illegally procured" because the finding as to attachment would later seem to be erroneous. * * *' We are convinced that in the case at bar the Government did sustain the burden of proving

> that appellant's conduct and expression in later years were opposed to the principles of the Constitution. Applying the long line of cases which the Court does not overrule by its decision in the Schneiderman case, we are further convinced that such conduct and expression may be relied upon to show that the oath of allegiance was taken with such mental reservations as to render it wholly nugatory, and that being the case, that the certificate of citizenship issued in reliance thereon was illegally procured."

In the *Krause* case, the appellant testified that several months after December 7, 1941, he had attempted to enlist in the Coast Guard. In commenting on this fact, the Circuit Court said, "Obviously the Court was not impressed by appellant's assertions of his efforts to enlist in the Coast Guard in August, 1942, several months after the current proceeding had been started to revoke his citizenship." Obviously Judge Yankwich was not impressed with apparent acts of patriotism, bond buying, and statements to Mrs. Mason by appellant subsequent to December 7, 1941.

The sole precedent that can be derived from Mr. Justice Murphy's opinion, which was not already established law, is that mere membership in the Communist Party, as that party was described in the record, does not *ipso facto* constitute a lack of attachment to the principles of the Constitution. There is no question of fraud as distinguished from lack of attachment in the *Schneiderman* case, and it is clear that irrespective of the opinions in the trial and circuit courts, the Supreme Court decision was not based on fraud. Mr. Justice Murphy says, at the end of paragraph 4 of his opinion, "The Government proceeds here not upon the charge of fraud but upon the

charge of illegal procurement;" thus indicating a distinction. The Court does not deny that lack of attachment to the principles of the Constitution would be illegal procurement; it simply holds that membership by one in the Communist Party is not *per se* an illegality as meant by the denaturalization statute.

Of course the principle of clear and convincing proof is but a restatement of previous decisions by the same court.

If there was any doubt that a distinction was noted between fraud and lack of attachment by Justice Murphy, then the opinion of Justice Douglas concurring dispels such doubt. He devotes most of his opinion to that distinction in order that by eliminating fraud, he can rationalize his thesis of *res judicata* for denaturalization proceedings.

In the instant case the only contention on the part of the Government is that appellant committed a fraud in obtaining his United States citizenship in that he reserved allegiance to Germany at the time he took his oath of citizenship [R. 43]. Looking at the allegations in the present complaint, there is a charge of misrepresentation as to his attachment to the principles of the Constitution, whereas in the *Schneiderman* case no misrepresentation was alleged or considered. What was considered was the fact of attachment. Unless the many comments, which are merely *obiter dicta,* by Justice Murphy apply to fraud and non-allegiance to the United States, the *Schneiderman* decision has no bearing on the instant case. That such *dicta* does not apply is made certain by Justice Douglas' concurring opinion, for without his concurring opinion, Justice Murphy's opinion would not be that of the majority, and it is limited or qualified by Justice Douglas'.

This analysis of the majority opinion in the *Schneiderman* case is buttressed by the disjunctive language of the statute authorizing the United States Attorney to institute proceedings for cancelling certificates of naturalization as follows:

> "It shall be the duty of the United States District Attorneys * * * to institute proceedings * * * for the purpose of cancelling the certificate of citizenship on the ground of fraud OR on the ground that such certificate of citizenship was illegally procured." Sec. 738 Nationality Act of 1940, 54 Stat. 1158, Title 8 U. S. C., Sec. 738.

Analysis of Appellant's Points.

Appellant's Point I.

"The Evidence Is Insufficient to Establish Fraud."

A. "The Rule of Construction Which Obtains in a Denaturalization Proceeding Is Different Than in a Naturalization Proceeding."

The Government concedes that the law requires that the Government's proof be clear and convincing, but it most emphatically denies appellant's contention that the rule of construction in a denaturalization proceeding is different from that in a naturalization proceeding, nor has appellant pointed out any difference. His Point I. A. is simply that the evidence must be clear and convincing.

B. "Fraud, to Justify a Court of Equity in Setting Aside a Judgment, Must Be Extrinsic."

The extrinsic fraud doctrine as advanced by appellant is not applicable to proceedings under Section 15 for cancelling certificate of naturalization.

In *U. S. v. Ness,* 245 U. S. 319, the Court by Mr. Justice Brandeis says, at p. 325, "The remedy afforded by

Section 15 for setting aside certificates of naturalization is broader than that afforded in equity, independently of statute, to set aside judgments, *United States v. Throckmorton,* 98 U. S. 61; *Kibbe v. Benson,* 17 Wall. 624; but it is narrower in scope than the protection offered under Section 11." If this is not so, then just what does Mr. Justice Douglas mean in the second paragraph of his opinion discussing Section 15 of the Nationality Act, now Section 338 of the Nationality Act and Section 738 of Title 8, U. S. C. A., when he defines fraud as connoting perjury, etc. What fraud is he talking about? Obviously such fraud as is ground for cancelling a certificate of naturalization. Furthermore, the majority opinion at p. 1252 refers to the kind of fraud which traditionally violates judgments by citing *U. S v. Throckmorton,* 98 U. S. 61, and *Kibbe v. Benson,* 17 Wall. 624, and says that the Court is not considering that question.

C. "The Evidence Is Wholly Insufficient to Establish Extrinsic or Any Fraud of Any Kind."

That portion of this point as to extrinsic fraud has been answered above.

Fraud has been clearly and convincingly shown by summary of evidence herein set forth above in that appellant did not forswear in truth and fact allegiance to The German Reich in favor of the United States and was not attached to the principles of the Constitution, for no man of appellant's evident intellectuality could have had real allegiance to the United States or be attached to the principles of the Constitution, who by his own admission in open court stated in 1940 that "Hitler is all right; he is more capable of running the government than the way our government functions at this time" [R. 546], and that although "east is east, and west is west, * * * and that

white people should realize that fact and not go beyond their rights, and * * * attend to their own business, that nevertheless Germany should have the right to have land enough to sustain its 80 million people." [R. 573-581.] These things are admitted by appellant. When to this is added the declarations of appellant, many of them coupled with expressive action and demeanor, to others before the trial, ranging in time from 1929 to and including the time of the trial of this action, all of which the trial court believed to have been said and done by the appellant, fraud is certainly proved clearly and convincingly.

To whom must it be clear and convincing? The answer is that it must so appear to the trial court, but not to the appellate court, as outlined under Point I of Government's argument above. However, the appellate court remains free to draw ultimate inferences and conclusions which, in its opinion, the findings reasonably induce.

Appellant makes much of his apparent frankness. The answer is that the old adage of "all saint without but all devil within" is perhaps more applicable to our modern sabateurs, confidence men and others of that ilk than ever before. The trial court saw and heard the appellant, and having so seen and heard, judged him.

This brief cannot either exceed or equal the clarity and pungency of the trial judge's opinion in delineating the falsity of appellant's statements and actions. Appellant having had for study and perusal his application for citizenship, he changes his mind about bearing arms against Germany twice in fifteen minutes. The Court's cross-examination of appellant reflected in the record, pp. 573-581, on German colonization is most illuminating of appellant's mental attitude, not only at the time he was

naturalized, but also at the time of the trial. Honest allegiance to a country is not switched from one to another overnight. All reason and experience is against crediting such a thing. Why should it be believed then that appellant honestly refused at 9 a. m. on a given day to bear arms against Germany yet was at 9:15 a. m. the same day ready and willing to do so? It is respectfully submitted the time element involved concerning Government's Exhibit 1 is alone an unsurmountable barrier to the belief of appellant's sincerity.

Appellant's Point II.

"The Evidence Is Wholly Insufficient to Establish That Appellant Obtained His Certificate of Naturalization Illegally."

Th Government contended at the trial and still does that the actions and declarations of appellant as summarized were false as to his oath, which constituted fraud. If fraud, then irrespective of the trial court's alleged lack of clarity in concluding that appellant obtained his certificate of naturalization illegally, the certificate was procured illegally. This does not mean the illegal procurement as set forth in the statute authorizing suit for cancellation, but that fraud is illegal. Appellant claims the instant case is strikingly parallel to the *Schneiderman* case. Obviously it is not, if our analysis of the *Schneiderman* case is correct, because no misrepresentation of attachment was alleged or considered in the *Schneiderman* case. The issue in the *Schneiderman* case was very limited. Here the issue of fraud grants wider latitude in the consideration of evidence, so that acts subsequent to taking the oath are material probative force on the question of fraud. As to the sufficiency of the evidence to support the Court's findings, that is answered above.

Appellant's Point III.

"Appellant, After Being Admitted to Citizenship, Had the Constitutional Right to Exercise Freedom of Thought and Speech."

The Government concedes the law as so expounded. However, that is not the point. The appellant is not precluded from free speech, but is only liable to have it shown that such speech may reflect a state of mind in the past opposed to what he claimed it to be in the past.

Appellant's Point IV.

"Appellant Was Entitled to a Judgment of Dismissal at the Close of Appellee's Case in Chief."

Unless the Government reiterates much of the foregoing, it must, and does, categorically deny the conclusions of Appellant's Point IV.

Appellant's Point V.

"Appellant Was Entitled to Findings on His Affirmative Defenses."

If the rule as to findings of fact is as enunciated by Appellant, the trial courts would be called upon to find not only that two and two make four, but to also find that two and two do not make any other sum excepting four. The matters appellant contends should have received the benefit of findings are not ultimate facts and never were issues but evidence pleaded by him in his Answr. Findings are required not on the truth or falsity of evidentiary details, but on ultimate facts.

Gay Ganes Inc. v. Smith, May 28, 1943, 7th Cir.;

Brown Paper Mill Co. v. Irvin, 134 F. (2d) 337.

In the instant case, even if the findings themselves fail to give full information to the Appellate Court, the record contains the formal opinion of the trial judge which details facts and conclusions. This failure of the findings then results in nothing but harmless error, if error at all.

U. S. v. Aluminum Co. of America, U. S. D. C. (S. D. N. Y.), December 17, 1941;

5 Fed. Rules Serv. 52a.11, Case 3, Department of Justice, Bulletin No. 137;

Knapp v. Imperial Oil & Gas Products, 130 F. (2d) 1.

It has been held that even failure of the trial court to state separately its findings of fact and conclusions of law is not ground for reversal if the *opinion* of the Court below affords a clear understanding of the basis of the decision and resolves the major factual issues.

Hazeltine Corp. v. General Motors Corp., 131 F. (2d) 34;

Minnesota etc. v. Coe, 125 F. (2d) 198;

Goodacre v. Panagopoulos, 110 F. (2d) 716.

Conclusion.

It is respectfully submitted that the judgment of the District Court should be affirmed.

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APPENDIX.

Statutes.

Natural Proceedings in General.

United States Code, Title 8:

"Sec. 372. Proceedings for naturalization. An alien may be admitted to become a citizen of the United States in the manner indicated under sections 372 to 394 of this title and not otherwise." (June 29, 1906, c. 3592, Sec. 4, 34 Stat. 596.)

"Sec. 373. Declaration of intention. He shall declare on oath before the clerk of any court authorized to naturalize aliens, or his authorized deputy, in the district in which such alien resides, two years at least prior to his admission, and after he has reached the age of eighteen years, that it is *bona fide* his intention to become a citizen of the United States and to reside permanently therein, and that he will, before being admitted to citizenship, renounce forever all allegiance and fidelity to any foreign prince, potentate, State, or sovereignty, and particularly, by name, to the prince, potentate, State or sovereign of which the alein may be at the time of admission a citizen or subject. Such declaration shall set forth the name, age, occupation, personal description, place of birth, last foreign residence, the date of arrival, the name of the vessel, if any, in which he came to the United States, and the present place of residence in the United States of said alien. No declaration of intention or petition shall be made outside of the office of the clerk of court." (June 29, 1906, c. 3592, Sec. 4, 34 Stat. 596; Mar. 4, 1929, c. 683, Sec. 1, 45 Stat. 1545.)

"Sec. 379. Petition for naturalization; when required to be filed; allegations; verification by citizen witnesses. Not less than two years nor more than seven years after he has made such declaration of intention he shall make and file, in duplicate, a petition in writing, signed by the applicant in his own handwriting and duly verified, in which petition applicant shall state his full name, his place of residence (by street and number, if possible), his occupation, and, if possible, the date and place of his birth; the place from which he emigrated, and the date and place of his arrival in the United States, and, if he entered through a port, the name of the vessel on which he arrived; the time when and the place and name of the court where he declared his intention to become a citizen of the United States; if he is married he shall state the name of his wife, and, if possible, the country of her nativity and her place of residence at the time of filing his petition; and if he has children, the name, date, and place of birth and place of residence of each child living at the time of the filing of his petition: *Provided,* That if he has filed his declaration before June 29, 1906, he shall not be required to sign the petition in his own handwriting.

The petition shall set forth that he is not a disbeliever in or opposed to organized government, or a member of or affiliated with any organization or body of persons teaching disbelief in or opposed to organized government, a polygamist or believer in the practice of polygamy, and that it is his intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name to the prince potentate, state, or sovereignty of which he at the time of filing of his petition may be a citizen or subject, and that it is

his intention to reside permanently within the United States, and whether or not he has been denied admission as a citizen of the United States, and, if denied, the ground or grounds of such denial, the court or courts in which such decision was rendered, and that the cause for such denial has since been cured or removed, and every fact material to his naturalization and required to be proved upon the final hearing of his application.

As to each period of residence at any place in the county where the petitioner resides at the time of filing his petition, there shall be included in the petition the affidavits of at least two credible witnesses, citizens of the United States, stating that each has personally known the petitioner to have been a resident at such place for such period, and that the petitioner is and during all such period has been a person of good moral character." (June 29, 1906, c. 3592, Sec. 4, 34 Stat. 596; Mar. 2, 1929, c. 536, Sec. 6(a), 45 Stat. 1513.)

"Sec. 381. Oath renouncing foreign allegiance and to support Constitution and laws. He shall, before he is admitted to citizenship, declare on oath in open court that he will support the Constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name to the prince, potentate, state, or sovereignty of which he was before a citizen or subject; that he will support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same." (June 29, 1906, c. 3592, Sec. 4, 34 Stat. 596.)

"Sec. 382. Prerequisite to admission to citizenship; residence; character; attachment to principles of Constitution; proof. No alien shall be admitted to citizenship unless (1) immediately preceding the date of his petition the alien has resided continuously within the United States for at least five years and within the county where the petitioner resided continuously within the United States for at least five years and within the county where the petitioner resided at the time of filing his petition for at least six months, (2) he has resided continuously within the United States from the date of his petition up to the time of his admission to citizenship, and (3) during all the periods referred to in this section he has behaved as a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States. At the hearing of the petition, residence in the county where the petitioner resides at the time of filing his petition, and the other qualifications required by this section during such residence, shall be proved by the oral testimony of at least two credible witnesses, citizens of the United States, in addition to the affidavits required by section 379 of this title to be included in the petition. If the petitioner has resided in two or more places in such county and for this reason two witnesses cannot be procured to testify as to all such residence, it may be proved by the oral testimony of two such witnesses for each such place of residence, in addition to the affidavits required by section 379 of this title to be included in the petition. At the hearing, residence within the United States but outside the county, and the other qualifications required by this section during such residence shall be proved either by depositions made before a naturalization examiner or

by the oral testimony of at least two such witnesses for each place of residence. * * * (June 29, 1906, c. 3592, Sec. 4, 34 Stat. 596; Mar. 2, 1929, c. 536, Sec. 6(b), 45 Stat. 1513.)

"Sec. 398. Final hearings to be in open court." (June 29, 1906, c. 3592, Sec. 9, 34 Stat. 599.)

"Sec. 399. The United States shall have the right to appear before any court or courts exercising jurisdiction in naturalization proceedings for the purpose of cross-examining the petitioner and the witnesses produced in support of his petition concerning any matter touching or in any way affecting his right to admission to citizenship, and shall have the right to call witnesses, produce evidence, and be heard in opposition to the granting of any petition in naturalization proceedings." (June 29, 1906, c. 3592, Sec. 11, 34 Stat. 599.)

Denaturalization Proceedings.

"Sec. 738. Revocation of naturalization.

(a) It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 701 in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground of fraud or on the ground that such order and certificate of naturalization were illegally procured."

* * * * * * * * *

(Section 338 of the Nationality Code, Oct. 14, 1940, c. 876, Title I, Subchap. III, Sec. 338, 54 Stat. 1158, United States Code, Title 8, Sec. 738.)

"Sec. 701. Jurisdiction to naturalize.

(a) Exclusive jurisdiction to naturalize persons as citizens of the United States is hereby conferred upon the following specified courts: Districts Courts of the United States now existing * * * in any state * * *. The jurisdiction of all the courts herein specified to naturalize persons shall extend only to such persons resident within the respective jurisdiction of such courts * * *.

* * * * * * * * *

(Oct. 14, 1940, c. 876, Title I, Subchap. III, Sec. 301, 54 Stat. 1140, United States Code, Title 8, Sec. 701.)

No. 10,387

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

FRIEDRICH WALTER BERGMANN,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

BRIEF OF NORTHERN CALIFORNIA BRANCH OF THE AMERICAN CIVIL LIBERTIES UNION, AMICUS CURIAE, IN SUPPORT OF APPELLANT.

WAYNE M. COLLINS,
Mills Tower, San Francisco,
Attorney for Amicus Curiae.

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34 Corpus Juris 1157, Sec. 1639(2) 16
34 Corpus Juris 1158, Sec. 1640(b) 16
59 Corpus Juris 919, Sec. 520 5
59 Corpus Juris 921-922, Sec. 521 5

Rules of Federal Procedure, Rule 9b 3

No. 10,387

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

FRIEDRICH WALTER BERGMANN,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

BRIEF OF NORTHERN CALIFORNIA BRANCH OF THE AMERICAN CIVIL LIBERTIES UNION, AMICUS CURIAE, IN SUPPORT OF APPELLANT.

NATURE OF CASE.

This is an appeal from a judgment of a District Court denaturalizing the appellant under a proceeding brought under the Nationality Act of 1940 (8 USCA 738) following findings of fact made after trial that the appellant after being admitted to citizenship was guilty of declarations from which an inference was drawn by the trial court that at the time of naturalization he entertained mental reservations of allegiance to his former sovereign and that, by reason thereof, his oath of allegiance to the United States was false and his certificate of citizenship was fraudulently or illegally obtained.

The principal question involved in the appeal is simply whether or not the naturalized citizen can or cannot exercise fully the constitutional rights guaranteed by the Constitution to the naturalized as well as to the native-born citizen. As an incident thereto there arises the question whether citizenship once granted to an alien is revocable for any reason other than extrinsic fraud practiced in the procurement of a citizenship certificate. A final determination on these questions of law is of great importance not only for the appellant but also for large numbers of those whose citizenship arising from naturalization is endangered by reason of the attack the government has launched upon naturalization certificates.

THE TRIAL COURT LACKED JURISDICTION TO ENTERTAIN THE SUIT.

Affidavit Showing Good Cause Is Prerequisite to Maintenance of Suit.

The complaint is defective and ought to have been dismissed because the plaintiff instituted the action without first presenting to the court below *"an affidavit showing good cause therefor"* pursuant to the provisions of 8 USCA 738(a). A similar requirement previously existed under Section 15 of the Act of 1906. (8 USCA 405.) A conflict of authority appears to exist in the Circuits upon this point, however. In *U. S. v. Salomon,* 231 Fed. 928 (CCA-5), a denaturalization proceeding commenced prior to 1906 in which such an affidavit had not been presented to the court, an action was dismissed upon the ground that the

affidavit was a mandatory jurisdictional condition precedent to the right to bring such a suit. In *Schwinn v. U. S.,* 112 Fed. (2d) 74, which was decided under the Act of 1906, this court expressed an opinion that such an affidavit "is not jurisdictional". The expression evinces a willingness to nullify a requirement that fell within the constitutional power of Congress to impose as a jurisdictional prerequisite to the bringing of a suit. Inasmuch as Congress acted within its sphere in making the filing of a suit dependent upon the satisfaction of the condition precedent the declaration of the court appears to be the product of error. The courts are authorized neither to ignore conditions which Congress may impose within its constitutional powers nor to nullify or refine away its legislative power by judicial interpretation. If Congress is prohibited by Art. III of the Constitution from invading the judicial field the courts are similarly prohibited by Art. I from invading the legislative field.

THE COMPLAINT FAILS TO STATE GROUNDS FOR EQUITABLE RELIEF.

No Facts of Fraud Are Alleged.

The complaint fails to state grounds for equitable relief for the reasons it is utterly lacking in averments of fact showing *when* and *how* and the *circumstances* under which plaintiff made the discovery of the fraud asserted and is utterly lacking in averments of the factual circumstances constituting the fraud. See Rule 9b of the *Rules of Federal Procedure* which re-

quires that *"the circumstances constituting fraud or mistake shall be stated with particularity"*. The complaint is also utterly lacking in averments of fact showing why the discovery of the alleged fraud was not sooner made. The rule is that it is necessary *"to plead affirmatively facts excusing failure to make an earlier discovery of the circumstances of the fraud relied upon"*. (12 *Cal. Juris.* 806-807.) In the leading case of *Lataillade v. Orena,* 91 Cal. 565 at 578, the rule was established that in order to state a cause of action a party relying on fraud,

> "must show that he used due diligence to detect it, and if he made any particular discovery, should state when it was made, what it was, how it was made, and why it was not made sooner; and further, that one will be presumed to have known whatever with reasonable diligence he might have ascertained concerning the fraud of which he complains."

In accord:

Del Campo v. Camarillo, 154 Cal. 647, 657;
Lady Washington C. Co. v. Wood, 113 Cal. 482;
Wood v. Carpenter, 100 U.S. 140.

See, also,

4 *Cal. Juris.* 793, Sec. 26.

The Suit Is Not Maintainable Under the Nationality Act of 1940.

The Nationality Act of 1940 contains many entirely new provisions and the portion of the subject matter dealt with in the prior naturalization statutes which it incorporates in a greatly altered and revised form is cast in different molds. Its enactment, therefore,

repealed *in toto* the former statutes relating to naturalization. The rules enunciating this are set forth as follows:

> "Where a later act covers the whole subject of earlier acts, embraces new provisions, and plainly shows that it was intended, not only as a substitute for the earlier acts, but to cover the whole subject then considered by the legislation, and to prescribe the only rules in respect thereto, it operates as a repeal of all former statutes relating to such subject matter. The rule applies not only where the former acts are inconsistent or in conflict with the new act but also even where the former acts are not necessarily repugnant in express terms, or in all respects, to the new act. In order to effect a repeal by implication on this ground it must appear that the subsequent statute covered the whole subject matter of the former one, and was intended as a substitute for it."
>
> 59 *Corpus Juris* 919, Sec. 520.

> "A subsequent statute, revising the whole subject matter of a former one, and evidently intended as a substitute for it, although it contains no express words to that effect, must operate to repeal the former to the extent to which its provisions are revised and supplanted. This is true even though the subsequent statute contains no express words of repeal and is not repugnant to the former statute."
>
> 59 *Corpus Juris* 921-922, Sec. 521.

The present suit was commenced under the provisions of Section 338 of the Nationality Act of 1940. (8 USCA 738.) The misrepresentations alleged there-

in, if true, occurred prior to the passage of this Act when the procedural provisions of 8 USCA 405 governed but which are now obsolete. Consequently, the suit is barred by the fact that the statute under which it might have been brought has been repealed and the present statute cannot be applied so as to punish the appellant for acts or declarations prior to 1940 or to deprive him of precious constitutional rights of citizenship which accrued to him prior thereto. *Ex post facto* and *retroactive laws* are forbidden by Section 9 of Art. I of the Constitution. This prohibition would appear to apply to matters of a quasi-criminal nature such as denaturalization suits and to *retrospective laws* where constitutional rights, namely, the rights of citizenship and citizenship itself are affected in civil actions.

Naturalization Judgments Succumb to Attacks on Jurisdictional Grounds For Extrinsic But Not Intrinsic Fraud.

The complaint contains neither general nor specific allegations of any facts constituting *extrinsic fraud* which would justify equitable relief. It contains nothing but general allegations of misrepresentations of factual matters of a non-jurisdictional nature which, if true, constitute nothing but *intrinsic fraud* from which equity is not empowered to grant relief. The rule has long been settled that false testimony, misrepresentation of material facts or the suppression of the truth which involve only matters of a non-jurisdictional nature *do not operate to deprive a court of jurisdiction.* They do not constitute *extrinsic fraud* which vitiates a judgment but *intrinsic*

fraud from which no relief can be granted when the judgment has once become final.

U. S. v. Throckmorton, 98 U.S. 61, 25 L. Ed. 93, *establishing federal rule;*

Pico v. Cohn, 91 Cal. 129, *establishing rule in California.*

The complaint alleges that the appellant's fraud consisted of misrepresentations of facts of a non-jurisdictional nature. The proof adduced in support of the allegations at the trial below, construed most strongly against him and without benefit of the "clear, unequivocal, and convincing" evidence rule, demonstrates that the fraud and illegality consisted simply of post-naturalization declarations. Were these at all admissible in evidence they tended to prove nothing but misrepresentations of non-jurisdictional facts and, consequently, their utterance, at most, constituted intrinsic fraud. The complaint, therefore, failed to state a cause of action and the evidence failed to establish a cause of action for any relief whatever.

Attention is also drawn to the fact that at the naturalization proceeding the appellee was present in the persons of its duly constituted representatives, the naturalization examiner and his attorney, and had an opportunity to question the appellant and his witnesses and to expose any fraud that may have been practiced. It was guilty of *laches* and is chargeable with *negligence* in failing to have exposed the non-jurisdictional misrepresentations, if any, of which it now complains some six years later. Having failed

so to do it is *estopped* from attacking the validity and finality of the naturalizing decree and the matter is *res judicata.* A like estoppel arises from the fact that the naturalization examiner, as the agent of the government, submitted to the naturalizing court prior to the final hearing on the appellant's petition for citizenship the government's own favorable recommendation that the petition be granted. The defenses of laches, waiver and estoppel have been declared to be unavailable in denaturalization suits. See *U. S. v. Ovens,* 13 Fed. (2d) 376 and *U. S. v. Richman,* 17 Fed. (2d) 28, as examples. These opinions, however, appear confused in that they regard fraud and illegality as being extrinsic and not intrinsic matters because of their mistaken view that all issues involved in naturalization proceedings are jurisdictional prerequisites. The defenses are not available in cases involving extrinsic fraud because a judgment obtained by such means is not a judgment at all but a nullity for the reason that where such fraud is practiced the naturalizing court does not have power to naturalize for want of satisfaction of the jurisdictional prerequisites to naturalization. The defenses would seem to be available in all cases involving mere intrinsic fraud which never deprives the court of jurisdiction. If the government steps down from its lofty perch to enter the arena of equity it automatically submits to be bound by the ordinary rules of equity on a like footing as any private litigant.

The provisions of 8 USCA 738 provide for revocation of naturalization "on the ground of fraud or on

the ground that such order and certificate of naturalization were illegally procured". In *Schneiderman v. U. S.,* 87 L. Ed. 1249, the court devoted discussion to the difference between the meaning of fraudulent procurement and illegal procurement without shedding much light on the matter. The distinction between the two, if any was intended by Congress, is that the former involves the question of tortious or criminal intent on the part of an applicant in misrepresenting or suppressing jurisdictional prerequisites whereas the latter, being a more comprehensive expression, includes, in addition thereto, simple accident or error as to jurisdictional prerequisites whereby naturalization is mistakenly obtained. The appellee has neither stated nor proved a cause of action for fraud or illegality.

Jurisdictional Prerequisites to Nationalization.

The questions whether or not an applicant renounces his former allegiance, is attached to the principles of the Constitution and has behaved as a person so attached for the statutory period are all questions of fact to be determined in a final hearing on a petition for citizenship. They are placed in issue at the hearing. The evidence adduced in support of these issues is considered and weighed by the naturalizing court. The findings and recommendations of the naturalization examiner are factual matters of an evidentiary nature which are also given weight by the naturalizing court. These are issues of fact upon which the finding of the court is final and conclusive in the absence of an abuse of legal discretion.

These issues are of a non-jurisdictional nature. They do not constitute jurisdictional prerequisites the want of which deprives the court of jurisdiction to naturalize.

Where one who has not resided within the United States for the required five-year period is erroneously or fraudulently admitted to citizenship the decree of naturalization is void because the court wants jurisdiction to entertain the suit and is without jurisdiction to naturalize. Misrepresentations by an applicant or his witnesses that the applicant has resided here for the required period constitutes *extrinsic fraud* on the court because such give it a spurious jurisdiction. The residential requirement imposed by the statute is a jurisdictional prerequisite and the fraud practiced is one by means of which a court is induced to exercise a jurisdiction that is utterly wanting, which it has never gained and is not empowered to exercise. See *Johannessen v. U. S.,* 225 U.S. 326, 32 S. Ct. 614 (decided May 27, 1912), and *Schwinn v. U. S.,* 112 Fed. (2d) 74. See, also, *U. S. v. Ginsberg,* 243 U.S. 474, 37 S. Ct. 422, where a judgment was also declared void for the additional reason that it was rendered by a pro tem judge in chambers. This failed to satisfy the jurisdictional condition precedent required by the statute that the hearing be held "in open court" for want of which the court was without jurisdiction to render a judgment.

A similar conclusion was reached in *U. S. v. Van Ness,* 245 U.S. 319, 38 S. Ct. 118, where the filing of a certificate of arrival of an alien, then required by

statute to be filed with the petition for citizenship, was declared to be a jurisdictional prerequisite to naturalization and not a mere form of proof to be introduced in evidence in the proceeding. The court recognized the distinction between what may be termed fraudulent misrepresentations as to jurisdictional prerequisites to the right to citizenship and fraudulent misrepresentations of mere evidentiary matters of a non-jurisdictional nature which are placed in issue in such proceedings. Misrepresentations of the former type constitute *extrinsic fraud* upon the court and vitiate the judgment whereas misrepresentations of the latter type constitute *intrinsic fraud* and the judgment is safe from attack. It recites:

> "A decision on such minor questions (competency or weight of evidence or credibility of witnesses, or mere irregularities in procedure), at least of a state court of naturalization, is, though clearly erroneous, conclusive even as against the United States if it entered an appearance under Sec. 11."

The same conclusion was reached in *Maney v. U. S.*, 278 U.S. 17, 49 S. Ct. 15, where the filing of such a certificate of arrival at the time the petition for naturalization was filed was held to be a condition precedent necessary to vest the court with jurisdiction to naturalize. It was declared therein that the filing thereof *nunc pro tunc* would not cure the jurisdictional defect and, consequently, the court was without jurisdiction and its judgment a nullity and not res judicata.

In the *Johannessen* case the Supreme Court suggested that Congress may "authorize a direct attack upon certificates of citizenship in an independent proceeding such as is authorized by Sec. 15 of the Act of 1906" under the theory that the original naturalization proceeding (held in 1912 or prior thereto) was not *"an adversary proceeding"* inasmuch as the applicant was *"not required to make the government a party nor to give any notice to its representatives"*. The record in the case disclosed that Johannessen appeared *"before one of the courts designated by law for the purpose, and without notice to the government, and without opportunity to appear, submitting his application for naturalization with ex parte proofs in support thereof, and thus procuring a certificate of citizenship."* It is significant the case was decided in 1912 *when no preliminary hearings were provided.* In 1926 Title 8 USCA, Sec. 399a was enacted, consequently from 1926 until the Nationality Act of 1940 (8 USCA 733) became effective, pursuant to *authority delegated by the courts* a *"preliminary hearing"* of an applicant was conducted by a government examiner whose *"findings and recommendations"* were submitted to the court under 8 USCA 399a(b). Naturalization proceedings prior to 1926, therefore, were not adversary ones. *From 1926 to 1940 the proceedings were adversary ones.* When the *Johannessen* case was decided naturalization proceedings were *summary* and *ex parte* and *no notice was required* to be given to the government. But from 1926 to 1940 the government conducted hearings and made recommendations to

the court under 8 USCA 399a(b), hence the naturalization proceeding in which the appellant received citizenship in 1937 was an "adversary proceeding". In the *Johannessen* case it is to be noted the government had no notice of the hearing in the naturalizing court for the decision recites that the government *then, in 1912,* had no opportunity "to appear * * * for the purpose of cross-examining the petitioner and the witnesses * * * to call witnesses, produce evidence, and be heard in opposition to the granting of * * * the petition" which was then a mere *optional right* conferred upon the government by 8 USCA 399 but for which no notice was provided for or required to be given to the government in order to put it on notice as to the pendency of the hearing. (These sections have been repealed by the Nationality Act of 1940. Section 733 of Title 8 USCA now makes it a *mandatory duty* of the Commissioner of Immigration and Naturalization to hold preliminary hearings of applicants for citizenship, to make findings and submit recommendations thereon to the court. He *"must make recommendations to grant, or deny petitions or to continue cases"*. All naturalization proceedings henceforth must be classified as adversary proceedings.)

Between 1926 and 1940, therefore, whenever the government conducted a preliminary hearing of an applicant, made findings and submitted its recommendations to a court or appeared at the final hearings on the petition and contested the petition or failed to contest it the government was either a *party*

or a *privy* to the proceeding and the proceeding became "an adversary proceeding".

Appellant Was Naturalized at an Adversary Judicial Hearing.

The record herein demonstrates that the government in 1936 conducted a preliminary hearing and examination of the appellant (R. 222); that the naturalization examiners made their findings and submitted their recommendations to the naturalizing court (R. 231-232), and that the court, on April 9, 1937, at an open session, conducted the *final hearing* on the petition for citizenship pursuant to the mandate of 8 USCA 398. It is to be presumed that the naturalizing court performed its duty in subjecting the applicant to an examination on the merits of his petition. No inference to the contrary is to be drawn. These hearings are neither farcical nor perfunctory but are typical judicial hearings. The hearing is presided over by the judicial servant of the government. The government is a party or privy to the hearing and is present also in the person of the naturalization examiner and the government attorney attached to the office of the Commissioner of Immigration and Naturalization. The failure of the government to contest the petition when it has both notice and knowledge of the time and place of hearing, and is present thereat in the persons of its proper representatives who are offered ample apportunity to contest it and who are charged with the duty of safeguarding the government's interest does not convert the hearing into an *ex parte* one. Any conclusion to the contrary would be tantamount to an accusation that the gov-

ernment's own agents, examiners and naturalizing court, were derelict in their duties.

Original jurisdiction to naturalize aliens is conferred upon *federal district courts* and also upon *state courts of record* by the Nationality Act of 1940 (8 USCA 701) and formerly by 8 USCA 357. A state court does not function as a federal court and is not an agency of a federal court in naturalization proceedings. *In re Fordiani,* 98 Conn. 435, 120 A. 338, 339; 3 *Corpus Juris Secundum* 842, Sec. 134. In naturalization proceedings commenced in state courts the adjective law of the state, procedural and appellate, govern and those of the federal jurisdiction have no application. *Tutun v. U. S.,* 270 U.S. 568, 46 S. Ct. 425. See, also, *In re Bogunovich,* 18 Cal. (2d) 160, overruling prior California decisions and adopting rule of *Tutun* case. A proceeding in a federal court, therefore, to set aside a judgment of a state court would be a collateral attack upon the judgment of a court of a different sovereign jurisdiction and consequently impermissible. *U. S. v. Gleason,* 78 Fed. 396. A denaturalization suit brought under the Nationality Act of 1940 is an independent proceeding which may be commenced in a federal court to set aside a naturalizing decree granted either by a state court or a federal court which may not have been the naturalizing court but a co-ordinate court, consequently, the attack is in reality a collateral and not a direct attack. It appears beyond doubt that Congress cannot be empowered by statute to set aside naturalization decrees granted by competent state courts. Judgments of state courts are entitled to

"full faith and credit" in the federal courts under Section 1 of Art. IV of the Constitution. *Covington v. Covington Bank,* 198 U.S. 100, 25 S. Ct. 562; see, also, 34 *Corpus Juris* 1157, Sec. 1639(2), and cases there cited. Such judgments are final and conclusive "between the *parties* and *privies* to the judgment". *Englehard v. Schroeder,* 278 Fed. 341, affirm. 258 U.S. 610, 42 S. Ct. 382; *Privett v. U. S.,* 261 Fed. 351, affirm. 256 U.S. 201, 41 S. Ct. 455; and 34 *Corpus Juris* 1158, Sec. 1640(b) and cases there cited. It also appears beyond doubt that Congress is not empowered to set aside final judgments granted by federal courts for finality of court judgments is an incident to judicial power which is lodged in courts and not in Congress. It is settled that naturalization decrees are not subject to collateral attack. *Spratt v. Spratt,* 4 Pet. 393, 404, 7 L. Ed. 897, 902; *Campbell v. Gordon,* 6 Cranch 176, 3 L. Ed. 190; and *Ex parte Cregg,* 2 Cur. 98, Fed. Cas. No. 3380. If the *due process* of law guaranteed by the 5th Amendment has any significance it certainly includes the processes whereby citizenship is gained in a judicial hearing and attaches finality to the grant thereof. It prohibits Congress from authorizing successive attacks upon the validity of citizenship certificates at the whim and caprice of government officials.

A naturalizing decree is a "final decision" within the purview of 28 USCA 225(a) from which an appeal may be taken either by the government or by the applicant. *Tutun v. U. S.,* 270 U.S. 568, 46 S. Ct. 425. The government having failed to contest the petition of the appellant, to move for a new trial or to

vacate the judgment or to initiate an appeal therefrom within the proper time the judgment became final and conclusive and the matter *res judicata.* The judgment is not, therefore, subject either to direct or collateral attack except for extrinsic fraud and the remedy for fraud of this nature does not find its origin in a congressional statute but arises as an incident to judicial power which is vested in the courts by the Constitution. This type of fraud may be defined as fraud practiced by an applicant upon a court whereby the court assumes a jurisdiction to naturalize which it was not empowered to exercise and would not have except for the jurisdictional fraud perpetrated by the applicant or his witnesses. The naturalizing proceeding involved herein satisfied all the elements of an adversary proceeding for the government was a *party or privy* thereto. The appellant had resided in the United States for the required statutory period consequently the court had jurisdiction to naturalize. No extrinsic fraud was practiced upon that court. *The government has not alleged, contended or proved that the court was without jurisdiction or that it had lost jurisdiction to render the judgment it rendered.* It merely alleges in the complaint that misrepresentations of a factual but nonjurisdictional nature were made. These matters were actually put in issue and were resolved against the government and in favor of the appellant by the naturalizing court in the examination it conducted in accordance with the duty placed upon that court by the provisions of 8 USCA 398. The complaint alleges nothing but intrinsic fraud against which

equity cannot relieve. Had the appellant not possessed the required statutory residential qualifications for citizenship the judgment would have been a nullity whether the record disclosed mere error or false testimony on the length of residence for either would have deprived the court of jurisdiction inasmuch as the five-year residential requirement is a jurisdictional condition precedent which is essential in order to vest in the court the power to naturalize. It is significant that the complaint does not allege that any misrepresentations of a jurisdictional nature were made.

Rule in Pandit Case.

Where the government appears in a naturalization proceeding, whether it contests a petition for naturalization or fails to do so, the judgment or decree admitting an applicant to citizenship is an *adversary proceeding* and, if there is no jurisdictional defect as to the length of the applicant's residence in the United States arising from misrepresentations constituting extrinsic fraud, the judgment is final and conclusive and the matter is *res judicata.* Such is the express ruling in *U. S. v. Sakharam Ganesh Pandit,* 15 Fed. (2d) 285, decided by this court on November 11, 1926, where the government attempted in a proceeding brought under Section 15 of the Naturalization Act of 1906, 8 USCA 405, to denaturalize the appellee. The suit was dismissed by this court for the reason that the government having appeared in the naturalizing proceeding and contested the application the judgment granting the certificate was

"a final judgment" and the matter was *"res judicata"*. The government applied for certiorari but on March 27, 1927, the Supreme Court denied the application for a writ of certiorari. (See, 273 U.S. 759, 71 L. Ed. 878, 47 S. Ct. 473.)

The Schneiderman Case.

It is also significant that in the majority opinion of the Supreme Court in *Schneiderman v. U. S.*, 318 U.S., 87 L. Ed. 1249, *"the record"* did not reveal *"the circumstances under which"* Schneiderman *"was naturalized except that it took place in open court"*, or *whether or not the Government exercised its right to appear and to appeal"*. The special affirmative defense of *res judicata* apparently was not interposed by the defendant therein and, consequently, was not passed upon although this issue might have been considered and have been passed upon, had it been urged, as a reason why the complaint failed to state a cause of action and the court lacked jurisdiction to entertain the action. The concurring opinion of Justice Rutledge suggests, however, that a decree of a naturalizing court finalizes the matter and that it is *res judicata.* The concurring opinion of Justice Douglas also suggests the decree to be *res judicata* for it recites "the judgment of naturalization is final and conclusive except for fraud", that is, extrinsic fraud, *the type of fraud which deprives a court of jurisdiction* as defined in *U. S. v. Throckmorton,* 98 U.S. 61. In the majority opinion the question of *res judicata* was not discussed directly inasmuch as this de-

fense either was not pleaded or urged or was unnecessary to a decision.

The majority opinion in the *Schneiderman* case indicates quite clearly, however, that in a denaturalization suit the court is limited in the scope of its inquiry. It recites that *"he had not been arrested or subject to censure prior to 1927"* (the time of his naturalization); in discussing the application of *"the statutory requirement of attachment correctly to the proof adduced"* recites that the criterion is *"behavior for a period of five years"* preceding the naturalization date, and *"since the immediate problem is the determination with certainty of petitioner's beliefs* from 1922 to 1927 (the naturalization date), *events and writings since that time have little relevance"*. The opinion declares also *"This is the first case to come before us in which the Government has sought to set aside a decree of naturalization years after it was granted on a charge that the finding of attachment was erroneous."* It is to be inferred, therefore, that the Supreme Court entertains very serious doubts whether a judgment of a naturalizing court which has become final is subject to attack for any reason whatsoever except for extrinsic fraud. There would appear to be no doubt, in view of its expression on the scope of its own inquiry into the facts of the case, that *evidence of acts and declarations occurring after the decree of naturalization has become final is valueless and inadmissible.* The court below, therefore, erred in attaching significance and giving weight to the disputed acts and declarations

of the appellant occurring after his admission to citizenship.

The Denaturalization Statute Is Void as an Interference With Judicial Power.

Congress is authorized by Section 8, cl. 4 of Art. I of the Constitution to "establish an uniform Rule of Naturalization" and has done so in prescribing the naturalization laws. When a naturalizing court solemnly confers citizenship upon an applicant its original authority is derived from the naturalization acts of Congress but its own action is a valid expression of its own judicial power. The finality which attaches to such a judgment flows from the grant of judicial power the courts derive from Article III of the Constitution. Congress is neither empowered to interfere with nor to destroy the finality of such judgments for such would constitute the exercise of judicial power which is vested exclusively in the courts. Section 338 of the Nationality Act of 1940 (8 USCA 738), upon which the complaint herein is based, and its predecessor statute, 8 USCA 405, would appear, therefore, to be void as unconstitutional interferences with judicial power if they are applied to intrinsic fraud cases. They are also void as to extrinsic fraud cases for the power to set aside judgments for extrinsic fraud is a power inherent in courts without sanction of Congress for it is an incident to judicial power. In the *Schneiderman* case the question whether Congress *"can constitutionally attach to the exercise of judicial power"* authority to re-examine a judgment in a naturalization proceeding which has

become final was propounded by the majority opinion but was left undecided either as not having been raised or urged or as being immaterial. There would seem to be little doubt that Congress possesses no such power for were it authorized so to do the courts would become mere appendages to Congress, judicial power would be destroyed and tripartite constitutional government would cease to be a reality.

The Judgment Below Violates the Freedom of Speech Guaranty.

The opinion of the court below appears to violate the "clear, unequivocal, and convincing" evidence rule which, in light of the *Schneiderman* decision, is a rule of substantive law rather than a mere rule of evidence. It appears also to have been based upon the erroneous impression that declarations of the appellant made since his naturalization reflect a state of mind that may have existed at the time of naturalization and might indicate a mental reservation of allegiance to his former country. To give evidentiary weight to the untested theory that recent declarations reflect a pre-existing state of mind is irrational. It rules out of consideration the fact that one's views are dynamic and variable. It is a species of complicated illogic that would impute matters of opinion to a person retroactively. Carried to its extreme it means that one's opinions twenty years hence may be imputed to him now, *nunc pro tunc*. The theory is unworthy of any evidentiary weight. It would render the citizenship of the naturalized a thing of doubt and impermanence. A grant of citizenship is not conditioned upon the continuance of a

static state of mind upon political theory. The naturalized citizen is entitled to enjoy all the rights of the "natural born citizen" except that of eligibility to office of President which is denied by Section 1, cl. 5 of Art. II of the Constitution. *Luria v. U. S.,* 231 U. S. 9. It cannot be doubted that aliens and citizens alike are entitled to enjoy the full measure of freedom of expression guaranteed by the 1st Amendment without penalties so long as they do not transgress the clear and present danger rule. *Bridges v. California,* 314 U.S. 252, 86 L. Ed. 149. It is difficult to conceive, therefore, why the political and other expressions of a naturalized citizen uttered after his admission to citizenship, however unpleasant and unpopular the expressions might be, should fetch a penalty from which the native-born citizen is immune.

Upon being admitted to citizenship the Constitution extended to the appellant the "freedom of speech" and expression guaranteed by the 1st Amendment to the native born. His declarations did not transgress the *clear and present danger* test first formulated by Justice Holmes in his dissent in *Gitlow v. New York,* 268 U.S. 652, which became a rule of law in *Schenck v. U. S.,* 249 U.S. 47, consequently, he is immune from punishment and penalty for his utterances on the same basis as the citizen by birth. Had he been guilty of declarations violative of the clear and present danger rule he could have been charged with sedition, treason or other crime and upon a conviction therefor been subjected to an appropriate punishment and a consequent loss of civil

rights. These safeguards adequately preserve us from wrongdoing on the part of naturalized citizens without the addition of denaturalization which thrusts them into the category of "limited citizenship", a tentative and tenuous thing which would forever distinguish them from citizens by birth. The notion of classes of citizens is repugnant to American juristic reasoning and in conflict with the theory of equality which pervades our Constitution. It would indeed be strange that the naturalized citizen might be penalized for declarations that are permissible and even encouraged among the native born.

CONCLUSION.

Denaturalization suits are rare in peacetime and common in wartime. Sight ought not to be lost of the fact that except for the existence of the world conflict denaturalization suits on the numerical scale we are now witnessing in the district courts would not have been instituted. This type of terror has been loosed upon a large number of our foreign-born citizens who have failed to conform to the standards of thought and expression we would subsequently impose upon them. Apparently we must always wait until a war breaks out rendering their views and expressions unpopular before taking action against them. These suits are punishing actions of a *nunc pro tunc* nature. The objective is to deprive them of citizenship, cast them into concentration camps and, when the opportunity arises, deport them to Germany or Nazi-controlled

countries where they will be imprisoned for having renounced allegiance to Germany in taking oaths of allegiance to the United States. The belated filing of these actions indicates either a previous apathetic attitude upon the part of the government officials charged with the duty of naturalization or, if merit attaches to the charges contained therein, inexcusable negligence upon their part in failing to prevent unworthy and undeserving applicants from receiving certificates of citizenship. It is peculiar that the greater number of these suits are not directed against those who, with justification, may be said to be the big malefactors but against those who must be classified as the insignificant. Paradoxical as it may appear government agents and servants whom we have been wont to regard as tribunes of the people seem to have become the instruments if not the creatures of oppression. The denaturalization of the insignificant offender is a penalty disproportioned to the offense.

There are no degrees of citizenship. Naturalization confers upon the foreign-born citizen all those rights, privileges and immunities which inhere in the native-born citizen. If grants of citizenship to the foreign-born can be set aside for reasons other than extrinsic fraud their citizenship is provisional, insubstantial and unreal and that of the native-born is insecure and fleeting. The creation of classes of citizens and degrees of citizenships would be a denial of legal equality and would undermine constitutional government. In the absence of extrinsic fraud citizenship once gained

cannot be lost except by one of the specific methods prescribed by the Expatriation Statute. See 8 USCA 8 to 15 under the former acts and 8 USCA 800, 801, 804 and 808 prescribing the only methods by which nationality may now be lost. Denaturalization is neither a remedy for intrinsic fraud nor a substitute for expatriation. No jurisdictional error occurred and no extrinsic fraud was practiced in the naturalizing court consequently the grant of citizenship to the appellant was final and conclusive and is free from attack.

It is respectfully submitted that the judgment of the court below should be reversed.

Dated, San Francisco,
October 20, 1943.

Wayne M. Collins,
Attorney for Amicus Curiae.

No. 10,387

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

FRIEDRICH WALTER BERGMANN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

SUPPLEMENTAL BRIEF FOR THE UNITED STATES OF AMERICA

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No. 10,387

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

FRIEDRICH WALTER BERGMANN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

SUPPLEMENTAL BRIEF FOR THE UNITED STATES OF AMERICA

The facts of this case have been set forth in the brief previously submitted by the appellee. The brief of the Northern California Branch of the American Civil Liberties Union, *Amicus Curiae,* however, has raised a number of points of law not discussed in the appellant's brief, and which the appellee had not discussed in its brief in the belief that these points were so well settled that no discussion was necessary.

The appellee is particularly interested in refuting the contentions raised by *Amicus Curiae* that citizenship acquired by naturalization is a vested right, in absence of "extrinsic fraud" or "jurisdictional error" in naturalization and cannot be lost except by expatriation; and that the statute under which this proceeding is brought, Section

338 of the Nationality Act of 1940, 54 Stat. 1158 (U.S.C., Title 8, Section 738) is unconstitutional as an interference with the judicial power and also as a violation of the freedom of speech guarantee of the First Amendment. Such theories are contrary to the long line of precedents, both in the United States Supreme Court and in various United States Circuit Courts of Appeals, which, as the United States Circuit Court of Appeals for the Seventh Circuit stated in the recent case of *United States v. Krauss,* 136 F.(2d) 935 (C.C.A. 7th, 1943), (*U. S. ex rel. Harrington v. Schlotfeldt*), were not overruled by the decision of the United States Supreme Court in the recent case of *Schneiderman v. United States,* 87 L. Ed. 1249 (June 21, 1943). The appellee therefore feels it desirable to call this Court's attention to the precedents which have been established upon this subject by the federal courts during the past thirty years.

I. The Constitutionality of the Statute Is Well Established.

The first statute providing for cancellation of naturalization obtained through fraud or illegality was Section 15 of the Act of June 29, 1906, 34 Stat. 601 (formerly U.S.C., Title 8, Section 405). The constitutionality of this statute, which was replaced by Section 338 of the Nationality Act of 1940, was squarely upheld by the Supreme Court in two leading decisions, *Johannessen v. United States,* 225 U.S. 227 (1911) and *Luria v. United States* 231 U.S. 9 (1913). In these two decisions, the Court settled a number of points raised by *Amicus Curiae.* In the *Johannessen* case, for example, the Court squarely held that the "denaturalization" statute could properly be retrospective in application, contrary to the contention of

Amicus Curiae. 225 U.S. 227, 242. Moreover, in the *Luria* case, the Court held that it was not a violation of due process to admit evidence of conduct subsequent to naturalization in order to establish the intent of the defendant at the time of naturalization. 231 U.S. 9, 25, 26, 27.

In both cases, the Supreme Court emphasized the fact that citizenship is a privilege which no alien may obtain except upon full compliance with the statutory requirements laid down by Congress. In the *Luria* case, *supra,* the Court said (p. 23):

> "These requirements plainly contemplated that the applicant, if admitted, should be a citizen in fact as well as in name—that he should assume and bear the obligations and duties of that status as well as enjoy its rights and privileges. In other words, it was contemplated that his admission should be mutually beneficial to the government and himself, the proof in respect of his established residence, moral character, and attachment to the principles of the Constitution being exacted because of what they promised for the future, rather than for what they told of the past."

And in the *Johannessen* case, *supra,* the Court stated (pp. 241-242):

> "An alien has no moral nor constitutional right to retain the privileges of citizenship, if by false evidence or the like, an imposition has been practiced upon the Court, wthout which the certificate of citizenship could not and would not have been issued. As was well said by Chief Justice Parker in *Foster v. Essex Bank* (16 Mass. 245, 273), 'There is no such thing as a vested right to do wrong.' "

The Supreme Court has subsequently stated that no alien has the slightest right to naturalization unless all statutory requirements are complied with and that every certificate of naturalization must be treated as granted upon condition that the government may demand its cancellation unless issued in accordance with such requirements. *United States v. Ginsberg,* 243 U.S. 472 (1917); *United States v. Ness,* 245 U.S. 319 (1917); *Maney v. United States,* 278 U.S. 17 (1928). See also *United States v. Schwimmer,* 279 U.S. 644 (1929); *United States v. Macintosh,* 283 U.S. 605 (1931); *United States v. Bland,* 283 U.S. 636 (1931).[1]

As stated in the appellee's previous brief, the *Schneiderman* case does not overrule these fundamental principles established in the various Supreme Court decisions. It seems clear therefore from these precedents that the constitutionality of Section 338 of the Nationality Act of 1940, 54 Stat. 1158 (Title 8, U.S.C., Section 738) is no longer subject to serious challenge.

[1]In the *Macintosh* case, *supra,* the Supreme Court also made it clear that requirements for naturalization are not limited to a mere period of residence in the United States and to a compliance with the requisite procedural formalities. In that case, the Court said (pp. 616, 617):

> "Clearly, it would seem, in order that the court and the government, whose power and duty in that respect these provisions take for granted, may discover whether the applicant is fitted for citizenship;—and to that end, by actual inquiry, ascertain, among other things, whether he has intelligence and good character; *whether his oath to support and defend the Constitution and laws of the United States, and to bear true faith and allegiance to the same, will be taken without mental reservation* or purpose inconsistent therewith; whether his views are compatible with the obligations and duties of American citizenship; whether he will upon his own part observe the laws of the land, *whether he is willing to support the government in time of war, as well as in time of peace,* and to assist in the defense of the country, not to the extent or in the manner that he may choose, but to such extent and in such manner as he lawfully may be required to do. These, at least, are matters which are of the essence of the statutory requirements, and in respect of which the mind and conscience of the applicant may be probed by pertinent inquiries, as fully as the court in the exercise of a sound discretion, may conclude is necessary." (Italics supplied.)

II. The Doctrine of Res Judicata Is Inapplicable.

The *Amicus Curiae* has made much in its brief of the doctrine of *res judicata,* which it contends applies to decrees of naturalization, in absence of "extrinsic" fraud.

Appellee has stated in its previous brief that the doctrine of "extrinsic" fraud has no applicability to "denaturalization" proceedings. In this connection, however, it should be noted that Congress has expressly provided that naturalization may be revoked for one type of "intrinsic" fraud, *i.e.,* lack of intent to reside permanently in the United States. Section 338(b) of the Nationality Act of 1940, (Title 8, U.S.C., Section 738(b)). In *Luria v. United States,* 231 U.S. 9 (1913), the Supreme Court squarely sustained the constitutionality of a similar provision in Section 15 of the Act of June 29, 1906. Further, it might be noted that there were numerous judicial decisions holding that mental reservation of foreign allegiance and lack of attachment to the principles of the United States Constitution constituted fraud for which naturalization might be revoked under Section 15 of the Act of June 29, 1906, 34 Stat. 601, the predecessor statute of Section 338 of the Nationality Act of 1940. *Cf. Schurmann v. United States,* 264 Fed. 917 (C.C.A. 9th, 1920) appeal dismissed, 257 U.S. 621 (1922); *United States v. Kramer,* 262 Fed. 395 (C.C.A. 5th, 1919). By re-enacting this statute substantially without change, Congress incorporated the earlier judicial interpretations under the well-established canon of statutory construction. *Johnson v. Manhattan Ry. Co.,* 269 U.S. 479, 500 (1933); *Federal Communications Commission v. Columbia Broadcasting System,* 311 U.S. 132, 137 (1940); *Commissioner of Internal Revenue v. F. G. Bonfils Trust Co.,* 113 F.(2d) 788, 792 (C.C.A. 10th, 1940). Thus, Congress has

clearly indicated that it intended to make no distinction between "extrinsic" and "intrinsic" fraud in this particular statute.

A careful reading of the Supreme Court decisions relied upon by *Amicus Curiae* demonstrates that these decisions do not support its contention with respect to the doctrine of *res judicata.* Attention is called to the language of the Supreme Court in *United States v. Ginsberg,* 243 U.S. 472 (1917) at page 475:

> "No alien has the slightest right to naturalization unless all statutory requirements are complied with; and every certificate of citizenship must be treated as granted upon condition that the Government may challenge it as provided in Sec. 15 and demand its cancellation unless issued in accordance with such requirements. If procured when prescribed qualifications have no existence in fact it is illegally procured; a manifest mistake by the judge cannot supply these nor render their existence non-essential."

And in *United States v. Ness,* 245 U. S. 319 (1917), the Court held that the right of the government to contest a petition for naturalization and the "denaturalization" procedure were *cumulative* remedies against fraudulent or illegal naturalization. In this connection, the Court said (pp. 325-326):

> "The remedy afforded by §15 for setting aside certificates of naturalization is broader than that afforded in equity, independently of statute, to set aside judgments, *United States v. Throckmorton,* 98 U.S. 61; *Kibbe v. Benson,* 17 Wall. 624; but it is narrower in scope than the protection offered under §11. Opposition to the granting of a petition for naturalization may prevail, because of objections to the competency

> or weight of evidence or the credibility of witnesses, or mere irregularities in procedure. A decision on such minor questions, at least of a state court of naturalization, is, though clearly erroneous, conclusive even as against the United States if it entered an appearance under §11. For Congress did not see fit to provide for a direct review by writ of error or appeal. But where fraud or illegality is charged, the act affords, under §15, a remedy by an independent suit 'in any court having jurisdiction to naturalize aliens in the judicial district in which the naturalized citizen may reside at the time of bringing the suit.'"

The acceptance of complete and undivided allegiance to the United States and its institutions, and the willingness to defend this country at all times against all enemies, without reservation, have been described by the Supreme Court to be "of the essence of the statutory requirements" for naturalization, *United States v. Macintosh, supra.* Surely the *Ness* and *Ginsberg* cases do not mean that one may commit such a fraud in naturalization and acquire a vested right to citizenship, though one's naturalization may be subect to revocation at any time for an innocent procedural irregularity. Such an interpretation of the statute would be manifestly absurd and would defeat the fundamental purposes of the naturalization law, *i.e.*, to admit to citizenship only those persons who will be "citizens in fact as well as in name."

In this connection the *Amicus Curiae* has relied heavily upon the case of *United States v. Sakharam Ganesh Pandit,* 15 F.(2d) 285 (C.C.A. 9th, 1926), certiorari denied 273 U. S. 759. In that case, the government had contested the petition for naturalization on the ground that the petitioner was racially ineligible. The District Court hav-

ing ruled against the government, this Circuit Court of Appeals held that the decree of naturalization was *res judicata* as to this issue. In the instant case, the government did not contest the petition for naturalization, as indicated in the opinion of the District Court. Therefore, it is submitted that the *Pandit* case is inapplicable to the facts of the instant case.

The Constitutional Guarantee of Free Speech Is Not Violated.

Since *Amicus Curiae* has also placed much stress in its brief upon the alleged violation of the First Amendment, it seems desirable to elaborate upon the appellee's statement relative thereto in its previous brief.

It should be emphasized that this is not a prosecution for sedition and therefore the "clear and present danger" rule of *Schenck v. United States,* 249 U.S. 47 (1918) has no applicability. The purpose of introducing the defendant's statements into evidence is to assist the court in determining what his state of mind was at the time of naturalization. As in any other civil case, the statements made by the defendant when pertinent and not privileged, may be used as evidence without violating the constitutional right of free speech. If this were not so, it would be impossible to prove the ultimate fact in issue, *i.e.*, the defendant's state of mind at the time he was naturalized, in any of these cases where the charge is fraud on the ground of mental reservation of foreign allegiance. Manifestly, the test of the *Schenck* case, *i.e.,* the "clear and

present danger" of causing a breach of peace or other substantive evil, has nothing to do with the method of proof of an intangible fact such as fraudulent intent at the time of swearing allegiance to the United States.

The government submits that the question of free speech may be directly involved in "denaturalization" cases where the charge is solely fraud upon the ground of lack of attachment to the principles of the United States Constitution and where the evidence consists solely of criticism of the government and its policies. For example, the *United States v. Rovin,* 12 F.(2d) 942 (E.D. Mich., 1926), the District Court held that a naturalized citizen, in advocating certain changes in the Constitution by peaceful means, was merely exercising his rights under the First Amendment and had not shown thereby a lack of attachment to the principles of the Constitution. In sharp contrast is the instant case in which the government has shown, by a preponderance of clear and convincing evidence of very high type witnesses that the appellant has consistently manifested an attitude of disloyalty to the United States, a desire to help Germany and to see the United States lose the war, and a desire to supplant the poltical institutions of this country, including that of freedoom of speech, by a Nazi dictatorship. Surely the First Amendment was not intended to render the people of the United States helpless against the perpetration of such a gross and palpable fraud. That the federal courts have never so construed the First Amendment may be seen clearly from the discussion of the leading precedents as to mental reservation of allegiance in naturalization, which follows below.

The Rule of Schurmann v. United States Is Applicable.

In no "denaturalization" case before the Supreme Court has the Court had occasion to consider directly the charge of fraud in naturalization based upon a mental reservation of foreign allegiance. The clearest expression of opinion by the Court on the matter may be found in *United States v. Macintosh,* 283 U.S. 605, 616, 617 (1931), where the Court said in reference to a petitioner for naturalization, that "whether his oath to support and defend the Constitution and laws of the United States, and to bear true faith and allegiance to the same, will be taken without mental reservation or purpose inconsistent therewith; . . . whether he is willing to support the government in time of war, as well as in time of peace . . . are matters which are of the essence of the statutory requirements . . ."

In four leading decisions of various United States Circuit Courts of Appeals, it has been held that one who accepts the high privilege of American citizenship and still retains any allegiance to his former country has obtained his naturalization by fraud, so that his certificate of naturalization should be revoked under the remedy provided by Congress. In none of these cases did the Courts doubt the constitutionality of the remedy, either on the ground of interference with the judicial power, or of retroactivity of the statute, or of violation of the First Amendment, though in all cases naturalization was revoked upon the basis of evidence of disloyal acts and conduct occurring subsequent to the date of naturalization. *Schurmann v. United States,* 264 Fed. 917 (C.C.A. 9th,

This issue was not involved in the *Schneiderman* case.

1920), appeal dismissed 257 U.S. 621 (1922); *United States v. Kramer,* 262 Fed. 395 (C.C.A. 5th, 1919); *United States v. Krause,* 136 F.(2d) 935 (C.C.A. 7th, 1943); *United States v. Baumgartner,* (C.C.A. 8th, September 11, 1943).

The *Schurmann* case, *supra,* decided by this Circuit Court of Appeals is the leading case upon this point and has been followed by many other federal courts. In that case, the defendant, a native of Germany, was naturalized in the United States in 1904. The Court, in affirming a decree canceling the defendant's certificate of naturalization, said (pp. 918, 920):

> "In behalf of the United States there was abundant evidence that, before and after the declaration of war between the United States and Germany, Schurmann frequently praised the attitude of the Germans, defended the sinking of the Lusitania, said that he wanted to get over to Germany to be a surgeon in the German hospitals, anything Germany did was justified by her right to be supreme, said that America was wrong in entering the war, and that it was impossible to defeat Germany, advised against 'waste' of money in buying Liberty Bonds, said he wanted to get into Mexico,and by many other remarks indicated beyond any possible doubt that his feelings were entirely on the side of Germany as against the United States, as well as the other countries at war with Germany . . .
>
> "Was the lower court justified in holding that Schurmann, by reason of his attitude and declarations and expressions during the years 1916 and 1917, before and after the United States was at war with Germany, swore falsely in 1904 when he declared that he absolutely and entirely renounced and

adjured all allegiance and fidelity to the German government and emperor. Under the circumstances of the case, the only way of arriving at what the fidelity and allegiance of Schurmann were in December, 1904, is by trying out his attitude of mind and heart in the later years of 1916 and 1917, when, under then existing conditions men were specially aroused to give utterance to their real sentiments and to avow loyalty to one or another of the belligerent nations. Prior to 1916 his life seems to have been without special event indicative of patriotic feeling. But it was in the crucial times of 1917 that the respondent failed in the fundamental obligation to his oath of true faith and allegiance in 1904.

"One who spoke in that way, and whose frequent expressions were so plainly against the United States and in favor of Germany, must have taken the oath of full faith and allegiance with a reserved determination to be kept down, but nurtured, until a momentous time might come. In years, however, the time did come, and the criterion of original fraud must be the later conduct, which, in its relation to the earlier attitude, will furnish safe ground for judgment."

It is submitted that the *Schurmann* case governs the instant case, and that the principle of law set forth in that case is applicable here. As this Court pointed out in that case, it does not matter if a man for some years after his admission to citizenship gives no indication of his true feelings, when there is no occasion for him to do so. If, at the time of the crucial test of conflict between his adopted country and his native country, he clearly demonstrates that his true allegiance is to the latter, then it may

fairly be presumed that he never did renounce allegiance to the country of his birth.

Many other courts have applied the theory of the *Schurmann* case that a man's conduct at or about the time conflict arises between his former and his adopted country is the strongest proof on the question whether he in good faith swore allegiance to the United States. *United States v. Krause, supra; United States v. Baumgartner, supra; United States v. Wursterbarth,* 249 Fed. 908 (D. N.J., 1918); *United States v. Darmer,* 249 Fed. 989 (W.D. Wash., 1918); *United States v. Herberger,* 272 Fed. 278 (W.D. Wash., 1921); *United States v. Ebell,* 44 F. Supp. 43 (W.D. Texas, 1942) *United States v. Mickley,* 44 F. Supp. 735 (E.D. Mich., 1942); *United States v. Fischer,* 48 F. Supp. 7 (S.D. Fla., 1942); *United States v. Kuhn, et al.,* 49 F. Supp. 407 (S.D.N.Y., 1943); *United States v. Schuchhardt,* 49 F. Supp. 567 (N.D. Ind., 1942).

"Denaturalization" Is a Remedy Separate and Independent From Expatriation.

A careful reading of the Nationality Act of 1940 reveals the fundamental error in the contention of *Amicus Curiae* that the government is attempting to substitute "denaturalization" as a remedy for expatriation.

Section 338 of the Act (Title 8, U.S.C., §738) providing for "denaturalization" proceedings, appears in subchapter III of the Act, "Nationality Through Naturalization". Section 338 provides a remedy for the revocation

of naturalization *ab initio,* where such has been procured fraudulently or illegally.

The expatriation provisions of the Act appear in subchapter IV, "Loss of Nationality" and prescribe the methods by which American citizens, both native-born and naturalized, may renounce or abandon their citizenship. Section 408 of the Act (Title 8, U.S.C., Section 808), to which reference is made in the *Amicus Curiae* brief, provides: "The loss of nationality *under this chapter* shall result solely from the performance by a national of the acts or fulfillment of the conditions specified *in this chapter.*" (Italics supplied.) It seems clear that this provision was not intended to nullify the remedy of cancellation of naturalization expressly provided by Congress in another section of a different chapter of the same statute.

The Affidavit Is Not Jurisdictional.

In reference to the contention of *Amicus Curiae* that an affidavit is prerequisite to the maintenance of a suit under Section 338(a), the contrary view was expressed not only by this Circuit Court of Appeals in *Schwinn v. United States,* 112 F.(2d) 74 (C.C.A. 9th, 1940), affirmed 311 U.S. 616, but by other courts in *United States v. Leles,* 227 Fed. 189 (N.D. Calif., 1915) and in *United States v. Knight,* 291 Fed. 129 (D. Mont., 1923), affirmed 299 Fed. 571 (C.C.A. 9th, 1924).

In the *Schwinn* case, *supra,* 112 F.(2d) 75, 76, this Court quoted with approval the opinion of the District

Court in the *Knight* case, *supra* (291 Fed. 130): "The statute is inclusive, not exclusive, and. like statutes for actions on complaints by private prosecutors, does not preclude public prosecutors from proceeding of their own motion to enforce the laws." This interpretation of the statute is clearly applicable to the instant case.

An analysis of the case of *United States v. Salomon,* 231 Fed. 928 (C.C.A. 5th, 1916) indicates that that decision is not in conflict with the view which this Court expressed in the *Schwinn* case. In the *Salomon* case, the Court affirmed the dismissal of the suit because neither the petition nor the affidavit charged the commission of any fraud. Since the affidavit failed to state facts "showing good cause" for the institution of "denaturalization" proceedings, the Court held that it was defective under the statute. This decision is not therefore a direct precedent for the rule that an affidavit is jurisdictional under Section 338.

The Sufficiency of the Complaint Cannot Be Attacked Upon Appeal.

The contention made by *Amicus Curiae* that the complaint fails to state a sufficient cause of action may be quickly disposed of by reference to the Federal Rules of Civil Procedure, which governs procedure under Section 338 of the Nationality Act of 1940 in most respects. Rule 81(a)(6). Rule 12 prescribes the mode by which defendants may raise objections to a complaint and expressly provides that a party may move within twenty days after

the service of the pleading upon him for a more definite statement or for a bill of particulars of any matter which is not averred with sufficient definiteness or particularity to enable him properly to prepare his responsive pleading or to prepare for trial. (Rule 12(e).) Since the defendant did not avail himself of this provision of Rule 12 and has answered the complaint and defended the suit on the merits, the sufficiency of the complaint as to pleading cannot be questioned now.

Conclusion.

It is respectfully submitted the judgment of the court below should be affirmed.

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No. 10357

United States
Circuit Court of Appeals

For the Ninth Circuit.

UNITED STATES OF AMERICA,

Appellant,

vs.

MARY T. MARIN,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division

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Berkeley, California
Attorneys for Defendant and Appellee.

In the District Court of the United States in and for the Northern District of California, Southern Division.

No. 22080-W

UNITED STATES OF AMERICA,

Plaintiff,

vs.

1.9 acres of land, more or less, in Berkeley, Alameda County, California, SECURITY INVESTMENT COMPANY, a corporation, SEASIDE OIL COMPANY, a corporation, MARY T. MARIN, CITY OF BERKELEY, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, FIRST DOE, SECOND DOE, THIRD DOE, FOURTH DOE, FIFTH DOE, FIRST DOE CORPORATION, SECOND DOE CORPORATION, THIRD DOE CORPORATION, FOURTH DOE CORPORATION AND FIFTH DOE CORPORATION,

Defendants.

COMPLAINT

Now comes the United States of America by M. Mitchell Bourquin, Special Assistant to the Attorney General, at the direction and under the authority of the Attorney General of the United States and pursuant to the request of the Acting Secretary of the Navy, and for cause of action

against the above named defendants, alleges as follows: [1*]

I.

That this proceeding is instituted and the lands hereinafter described are taken pursuant to and under the authority of the provisions of the Acts of Congress approved July 29, 1941 (Public Law 192, 77th Congress; 55 Stat., Chap. 328); August 25, 1941 (Public Law 247, 77th Congress; 55 Stat., Chap. 400); August 1, 1888 (25 Stat., 357; U.S.C. Title 40, Sec. 257), and February 26, 1931 (46 Stat., 1421; U.S.C. title 40, sec. 258a), and any acts amendatory thereof or supplementary thereto.

II.

That the land hereinafter described is taken and condemned under the authority of the above-mentioned acts of Congress; for the uses and purposes authorized by said acts and is sought and taken by plaintiff for the establishment of essential equipment and facilities for the expansion of the American Forge Company, Berkeley, California, for use in the production of steel forgings for naval purposes; that said use of said land constitutes a public use and said lands have been selected by the Acting Secretary of the Navy for acquisition for said purposes and uses above stated and is required for immediate use in order that the necessary work may be begun thereon for carrying out said purposes and uses.

*Page numbering appearing at foot of page of original certified Transcript of Record.

III.

That the acquisition of said land by plaintiff will be of the greatest public benefit and the least private injury; that no part of said land has heretofore been appropriated for public use by said plaintiff, the State of California, or any political subdivision thereof. [2]

IV.

That the estate or interest which plaintiff seeks to take and condemn in the land hereinafter described is the fee simple title in and to said land, subject to existing public utility easements, if any.

V.

That there are sufficient funds now available with which plaintiff can and is authorized to pay just compensation for the land sought to be taken and condemned herein in whatever sum may be ultimately awarded in this proceeding for the taking of said land and any damages resulting therefrom.

VI.

That the land to be taken and condemned in this proceeding aggregates 1.9 acres, more or less, is situate in Berkeley, Alameda County, California, and is more particularly described as follows:

> Beginning at the corner formed by the intersection of the south line of Potter Street and the west line of Overland Avenue or Front Street; thence running south along the west side of Overland Avenue or Front Street to the

intersection of the north line of the State Highway; thence east along the State Highway and the south line of Lot 61 to the southeast corner of Lot 61; thence in a northeasterly direction along the north line of State Highway to the intersection of the south line of Murray Street; thence west along the south line of Murray Street to the northeast corner of Lot 57; thence north across Murray Street to the southeast corner of Lot 76; thence west along the south line of Lot 76 to the southwest corner of said Lot; thence north along the east line of Lots 75 and 167 to the northeast corner of Lot 167 and the south line of Potter Street; thence west along the south line of Potter Street to the point of beginning, containing 1.9 acres, more or less.

VII.

That a plan showing the land taken as above described is attached hereto, marked Exhibit "A" and made a part hereof by reference. [3]

VIII.

That plaintiff is informed and believes and therefore alleges that none of said land taken by this proceeding is a part of any larger tract belonging to the apparent or purported owners of said land herein described.

IX.

That the apparent and purported owners of the above described land and the sums deposited in the

Registry of the Court as estimated just compensation for the taking thereof are as follows:

Name	Lot No.	Estimated Fair Compensation
Mary T. Marin	75	$1,200.00
Security Investment Co.	65 to 74 inclusive	20,800.00
Seaside Oil Company	167 to 169 inclusive	20,800.00
Security Investment Co.	61 to 64 incl. part of 57 to 60 inclusive	4,650.00
City of Berkeley	For any streets, roads alleys or any interest or easement in any and all of the lands herein taken or appurtenances thereunto belonging.	1.00

X.

That all of the persons, firms or corporations who have or who may claim any interest in and to the above described property and who are therefore joined as defendants are the following: City of Berkeley, County of Alameda and State of California.

XI.

That the defendants First Doe to Fifth Doe, inclusive, [4] and First Doe Corporation to Fifth Doe Corporation, inclusive, are sued and designated herein by fictitious names for the reason that their true names are unknown to plaintiff but the plaintiff will, upon ascertaining their true names, substitute the same for such fictitious names by appropriate amendment ,and prays such leave of the Court; that said defendants, and each of them, may have or claim to have an interest in some piece or

parcel of the land sought to be taken and condemned in this action, but that the nature, character, or extent of such interest is unknown to plaintiff.

XII.

That simultaneously with the filing of this complaint, the Acting Secretary of the Navy is causing to be filed in this Court and cause, and filing on behalf of plaintiff, a Declaration of Taking, pursuant to the provisions of the Act of February 26, 1931 (46 Stat., 1421; U.S.C. title 40, sec. 258a) wherein and whereby said land heretofore described is taken in fee simple subject to existing public utility easements, if any, for the use and benefit of the United States of America, as aforesaid; and that with the filing of said Declaration of Taking, the plaintiff is paying into the Registry of this Court, to the use of the persons entitled thereto, as the estimated just compensation for the taking of said land heretofore described, the sum of Twenty-Six Thousand Six Hundred Fifty-One and no/100 Dollars ($26,651.00).

Wherefore, plaintiff prays judgment: [5]

1. Decreeing that on the filing of the Declaration of Taking and the depositing of the estimated just compensation for the lands subject of this action, the quantum of title and estate which plaintiff seeks to acquire in this action in the above described lands vested in the United States of America and the right to just compensation vested in the persons entitled thereto.

2. Fixing the time within which and the terms upon which the possession of said land shall be delivered to the plaintiff.

3. Decreeing that said land is taken for and applied to necessary public uses of the plaintiff as authorized by law and that all of said land is necessary thereto.

4. Determining the value of the land subject of this action and each separate interest therein and directing the payment for each separate interest to the persons entitled thereto.

5. For such other and further relief as the Court may deem meet and proper in the premises.

M. MITCHELL BOURQUIN
Special Assistant to the Attorney General
Attorney for Plaintiff [6]

VERIFICATION

United States of America
Northern District of California
City and County of San Francisco—ss.

M. Mitchell Bourquin, being first duly sworn, deposes and says:

That he is a Special Assistant to the Attorney General of the United States, and attorney for the plaintiff in the above-entitled action; that he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge, except as to matters which are therein

stated on his information or belief, and as to those matters that he believes it to be true.

That the reason why this verification is made by affiant and not by the plaintiff is that the plaintiff is a corporation sovereign.

That the sources of affiant's information and the grounds for his belief are the official communications, records, files, and documents received from the Attorney General of the United States, and from the Navy Department of the United States.

M. MITCHELL BOURQUIN

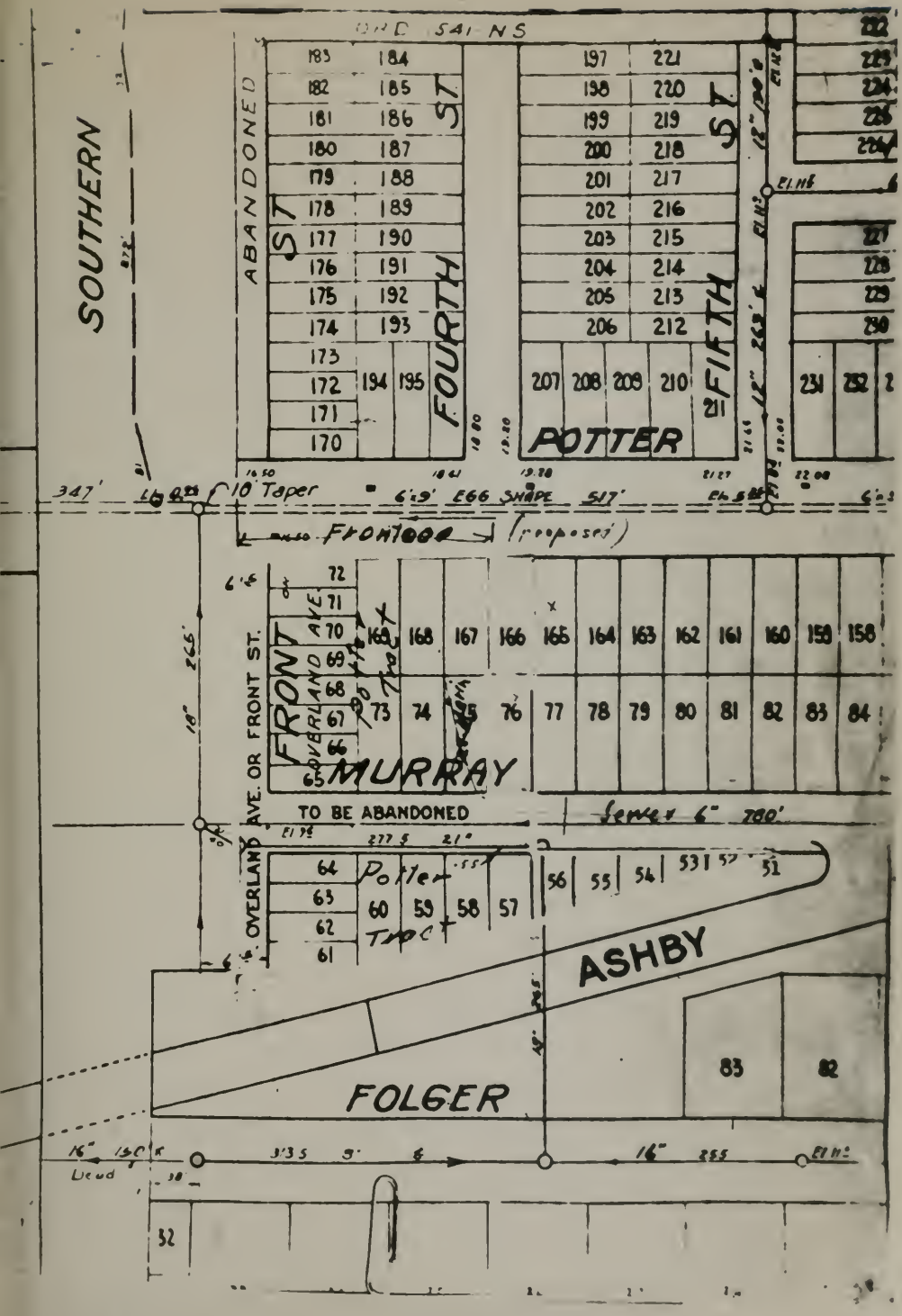
Subscribed and sworn to before me this 9th day of February, 1942.

[Seal] LOUIS V. VASQUEZ

Notary Public in and for the City and County of San Francisco, State of California.

My commission expires Dec. 4, 1943.

[Endorsed]: Filed Feb. 9, 1942, at 4:05 P.M. [7]



 Filed Feb. 9, 1942 at 4:05 PM

[Title of District Court and Cause.]

DECLARATION OF TAKING

Whereas, it has become necessary that the lands which are the subject of condemnation in the above entitled proceeding be taken for immediate public use by the United States of America for the establishment of essential equipment and facilities for the expansion of the American Forge Company, Berkeley, California, for use in the production of steel forgings, upon the filing of this declaration of Taking,

Now, Therefore, I, James Forrestal, Acting Secretary of the Navy, acting for and in the capacity of the Secretary of the Navy, under and pursuant to the provisions of the Acts of Congress approved July 29, 1941 (Public Law 192, 77th Congress; 55 Stat., Chap. 328); August 25, 1941 (Public Law 247, 77th Congress; 55 Stat., Chap 409); August 1, 1888 (25 Stat., 357; U.S.C., title 40, sec. 257), and February 26, 1931 (46 [8] Stat., 1421; U. S. C., title 40, sec. 258a), do hereby make and cause to be filed this declaration of taking, pursuant to said Acts of Congress and any acts amendatory thereof or supplementary thereto, and by virtue and authority thereof, do hereby state that I have selected for acquisition 1.9 acres of land, more or less, in Berkeley, Alameda County, California, which said lands are shown on a photostatic copy of a sketch which is attached hereto as Exhibit "A" and made a part of this declaration of taking. Said lands are more particularly described as follows:

Beginning at the corner formed by the intersection of the south line of Potter Street and the west line of Overland Avenue or Front Street; thence running south along the west side of Overland Avenue or Front Street to the intersection of the north line of the State Highway; thence west along the State Highway and the south line of Lot 61 to the southeast corner of Lot 61; thence in a northeasterly direction along the north line of State Highway to the intersection of the south line of Murray Street; thence west along the south line of Murray Street to the northeast corner of Lot 57; thence north across Murray Street to the southeast corner of Lot 76; thence west along the south line of Lot 76 to the southwest corner of said Lot; thence north along the east line of Lots 75 and 167 to the northeast corner of Lot 167 and the south line of Potter Street; thence west along the south line of Potter Street to the point of beginning, containing 1.9 acres, more or less.

And I do declare said lands to be taken under authority of the aforesaid acts of Congress; that the use to which said lands are to be put is the same as authorized by said acts; and that the estate hereby taken in said lands for the public use aforesaid is in fee simple, subject to existing public utility easements, if any.

And I, James Forrestal, Acting Secretary of the

Navy, acting for and in behalf of the Secretary of the Navy, do hereby state that the sum of money estimated by me to be just compensation for all of said lands, improvements thereon and appurtenances thereunto belonging, is twenty-six thousand [9] six hundred and fifty-one dollars ($26,651.00), which said sum having been appropriated by Congress is hereby deposited into the registry of the court for the use and benefit of the persons entitled thereto, and that the names and addresses of the owners of said property or interests therein and the amount of just compensation for said lands, and improvements thereon, which are hereby taken are shown on Schedule "A" which is hereto attached and made a part of this declaration of taking. I am of the opinion that the ultimate award for the taking of said lands will be within the limits prescribed by Congress.

In Witness Whereof, the petitioner, by and through the said James Forrestal, Acting Secretary of the Navy, acting for and in behalf of the Secretary of the Navy, has caused this declaration of taking to be signed in its name and has caused the seal of the Navy Department to be affixed hereto on the 31st day of January, 1942, in the City of Washington, District of Columbia.

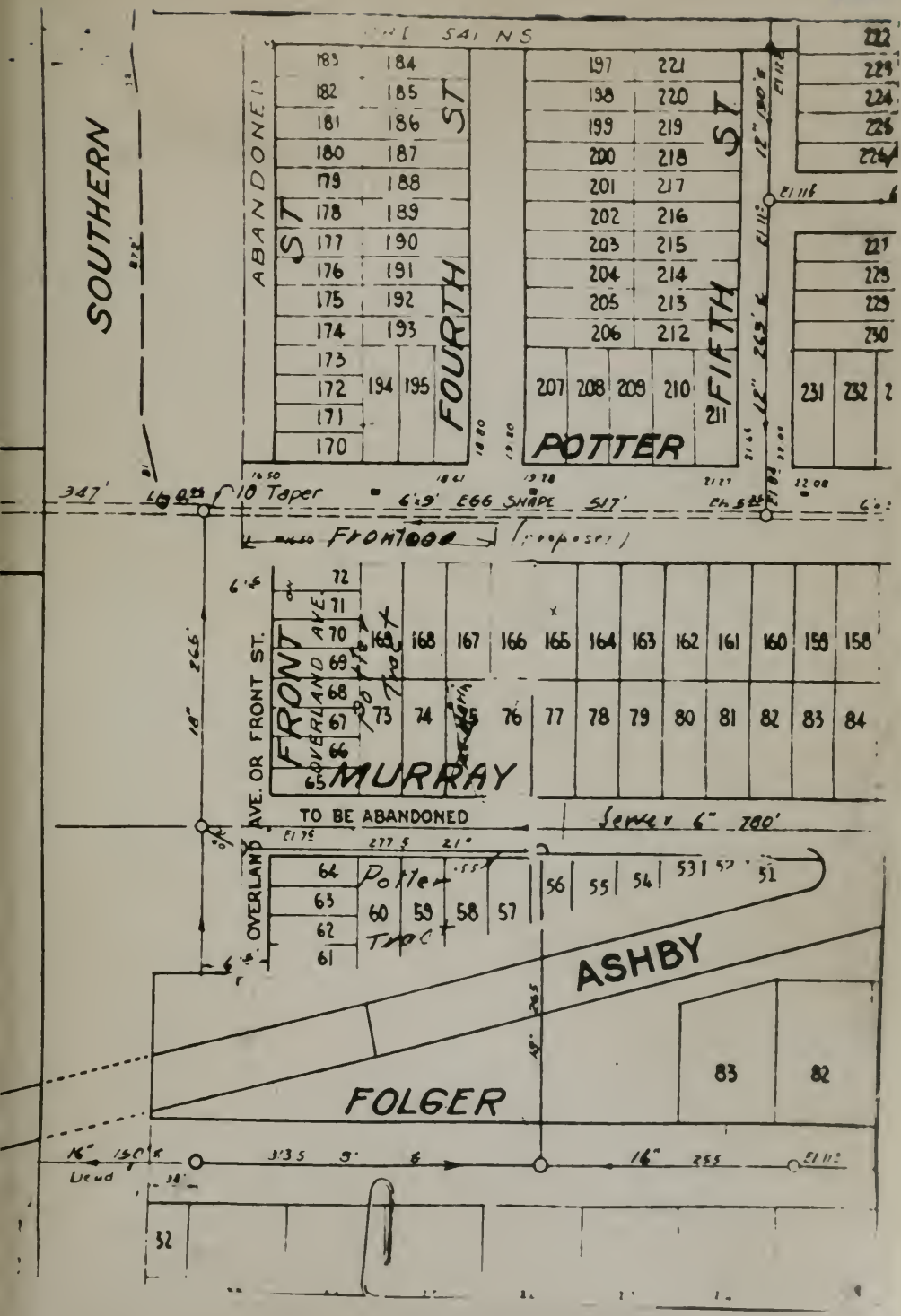
UNITED STATES OF
[Seal] AMERICA
By JAMES FORRESTAL
Acting Secretary of the
Navy [10]

Schedule "A"

The names and addresses of the persons having title to or other interest in the lands described in the within declaration of taking, and the amounts estimated to be fair compensation for each respective ownership, including all improvements thereon, are as follows:

Name and Address	Lot No.	Estimated Fair Compensation
Mary T. Marin Berkeley, California	75	$1,200.00
Security Investment Co., Berkeley, California.	65 to 74 inclusive	20,800.00
Seaside Oil Company, Berkeley, California. lessee	167 to 169 inclusive	
Security Investment Co., Berkeley, California	61 to 64 inclusive part of 57 to 60 inclusive	4,650.00
City of Berkeley, County of Alameda, State of California	For any streets, roads, alleys or any interest or easement in any and all of the lands herein taken or appurtenances thereunto belonging.	1.00
	Total	$26,651.00

[11]



Filed Feb. 9, 1942

[Title of District Court and Cause.]

JUDGMENT

The United States of America having this day made application to the Court to enter a Judgment on the Declaration of Taking heretofore filed this day, and for an Order fixing the date when possession of the property herein described is to be surrendered to the United States of America, and upon consideration thereof and of the Condemnation Complaint filed herein, said Declaration of Taking, [12] the statutes in such cases made and provided, and it appearing to the satisfaction of the Court:

First: That the United States of America is entitled to acquire property by eminent domain for the purposes as set out and prayed for in said complaint;

Second: That a Complaint in Condemnation was filed at the request of the Acting Secretary of the Navy, the authority empowered by law to acquire the lands described in said Complaint, and also under authority of the Attorney General of the United States;

Third: That said Complaint and Declaration of Taking state the authority under which, and the public use for which said lands were taken, that the Acting Secretary of the Navy is the person duly authorized and empowered by law to acquire lands such as are described in the Complaint for use by the United States of America for the establish-

ment of essential equipment and facilities for the expansion of the American Forge Company, Berkeley, California, for use in the production of steel forgings, and for such other uses as may be authorized by Congress or by executive order, and that the Attorney General of the United States is the person authorized by law to direct the institution of such condemnation proceedings;

Fourth: That a proper description of the lands sought to be taken, sufficient for identification thereof, is set out in said Declaration of Taking;

Fifth: That said Declaration of Taking contains a statement of the estate or interest in the said lands taken for such public use;

Sixth: That a plan showing the lands taken is incorporated in said Declaration of Taking; [13]

Seventh: That a statement is contained in said Declaration of Taking of a sum of money estimated by said Acting Secretary of the Navy to be just compensation for said land in the amount of Twenty-six thousand six hundred fifty-one and no/100 Dollars ($26,651.00), and that said sum was deposited in the Registry of this Court for the use of the persons entitled thereto, upon and at the time of the filing of said Declaration of Taking;

Eighth: That a statement is contained in said Declaration of Taking that the amount of the ultimate award of compensation for the taking of said property, in the opinion of said Acting Secretary of the Navy of the United States of America, will be within any limits prescribed by Congress as to the price to be paid therefor.

Now, Therefore, It Is Ordered, Adjudged and Decreed that the title to that certain tract of land aggregating 1.9 acres, more or less, situate and being in Berkeley, Alameda County, California, and more particularly described as follows:

> Beginning at the corner formed by the intersection of the south line of Potter Street and the west line of Overland Avenue or Front Street; thence running south along the west side of Overland Avenue or Front Street to the intersection of the north line of the State Highway; thence east along the State Highway and the south line of Lot 61 to the Southeast corner of Lot 61; thence in a northeasterly direction along the north line of State Highway to the intersection of the south line of Murray Street; thence west along the south line of Murray Street to the northeast corner of Lot 57; thence north across Murray Street to the southeast corner of Lot 76; thence west along the south line of Lot 76 to the southwest corner of said Lot; thence north along the east line of Lots 75 and 167 to the northeast corner of Lot 167 and the south line of Potter Street; thence west along the south line of Potter Street to the point of beginning, containing 1.9 acres, more or less. [14]

in fee simple absolute, subject to existing public utility easements, if any, vested in the United States of America, and the right to just compensation therefor vested in the persons entitled thereto upon

the filing of said Declaration of Taking and the depositing in the Registry of this Court the sum of Twenty-six thousand six hundred fifty-one and no/100 dollars ($26,651.00) as hereinabove recited; that said lands are deemed to have been taken and condemned for the public use of the plaintiff as authorized by law and are necessary and suited to said use; that just compensation for the taking of said lands shall be ascertained and awarded by judgment herein, and

It Is Further Ordered, Adjudged and Decreed that the plaintiff, United States of America, and its duly authorized agents and officers are entitled to and shall be let into immediate possession of said tract of land hereby acquired, taken and condemned for its use and the possession thereof shall be delivered immediately to the United States of America and its agents and the defendants, or any person or persons claiming to have any interest in said above described lands, or any part thereof, or any person or persons in possession of said lands and appurtenances, or any part thereof, are all and singularly hereby ordered forthwith to surrender said lands to the United States of America, and

It Is Further Ordered, Adjudged and Decreed that the sum of twenty-six thousand six hundred fifty-one and no/100 dollars ($26,651.00), deposited in the Registry of this Court for its distribution, and that said cause be held open for such other and further orders, judgments [15] and decrees of

this Court as may be just and equitable in the premises.

Done in open Court this 9th day of February, 1942.

A. F. ST. SURE,

Judge, United States District Court, Northern District of California.

[Endorsed]: Filed Feb. 9, 1942, at 4:17 P. M. [16]

[Title of District Court and Cause.]

ANSWER OF DEFENDANT, MARY T. MARIN

The defendant, Mary T. Marin, for her separate answer to the Complaint on file herein, admits, denies and alleges as follows: [17]

I.

Answering Paragraph I of said Complaint, this defendant alleges that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, basing her answer upon that ground, denies each and every, all and singular, generally and specifically, the allegations contained therein;

II.

Answering Paragraph II of said Complaint, this defendant denies that the alleged use of said land constitutes a public use; alleges that said use is for private gain; and alleges that she is without knowledge or information sufficient to form a belief as

to the truth of the allegations that said land is taken or condemned under the authority of the mentioned Acts of Congress, or for the uses or purposes authorized by said Acts, or that said land has been selected by the Acting Secretary of the Navy, or by anyone, for acquisition for the purposes or uses stated or otherwise, and, basing her denial upon that ground, denies generally and specifically said allegations and each and every part thereof;

III.

Answering Paragraph III of said Complaint, this defendant denies that the acquisition of said land by plaintiff, as asserted, will be of the greatest or any public benefit or the least private injury;

IV.

Answering Paragraph IV and V of said Complaint, this defendant alleges that she is without knowledge or [18] information sufficient to form a belief as to the truth of the allegations contained in said paragraphs and each of them, and, basing her answer upon that ground, denies each and every, all and singular, generally and specifically, the allegations contained in said paragraphs and each of them;

V.

Answering Paragraph IX of said Complaint, this defendant alleges that she is the sole owner of all that certain land situate in the City of Berkeley, County of Alameda, State of California, described as follows:

Beginning at a point on the northern line of Murray Street distant thereon easterly one hundred and sixty (160) feet from the intersection thereof with the eastern line of Front Street, as said streets are shown on the map hereinafter referred to; running thence easterly along said line of Murray Street forty (40) feet; thence northerly parallel with said line of Front Street one hundred (100) feet; thence westerly parallel with said line of Murray Street forty (40) feet; thence southeasterly parallel with said line of Front Street one hundred (100) feet to the point of beginning;

Being Lot No. 75, as said lot is delineated and designated upon that certain map, entitled "Map of the Potter Tract, Berkeley, Alameda Co., Cal., 1892" filed June 3rd, 1892, in Liber 17 of Maps, page 19, in the office of the county recorder of said Alameda County;

That the reasonable value of said land at the date of the filing of the Complaint herein was and now is Six Thousand Dollars ($6000.00); denies that the sum of Twelve Hundred Dollars ($1200.00), or any other sum less than Six Thousand Dollars ($6000.00), is fair, or reasonable or just compensation for the taking of said land, and, as to the other allegations contained in said paragraph, this defendant is without knowledge or information sufficient to form a belief as to the truth thereof and, therefore, leaves plaintiff to its proofs; [19]

VI.

Answering Paragraph X of said Complaint, this defendant alleges that she is the sole owner of the land described in Paragraph V of this Answer and referred to as Lot 75 in Paragraph IX of said Complaint;

VII.

Answering Paragraph XII of said Complaint, this defendant alleges that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, basing her answer upon that ground, denies each and every, all and singular, generally and specifically, the allegations contained therein;

Wherefore, defendant, Mary T. Marin, prays judgment:

(a) That plaintiff be denied any right to take any part or portion of the land of this defendant, described in said Complaint or in this Answer, or, in the alternative, if it be found that plaintiff is entitled to take said land:

(b) That this defendant have and recover from plaintiff, damages in the sum of Six Thousand Dollars ($6000.00) for the taking of said land;

(c) That this defendant have and recover her costs of suit incurred herein;

(d) That this defendant be granted such other and further relief as the Court may deem meet and proper in the premises.

CHAS. O. BRUCE,
Attorney for Defendant,
MARY T. MARIN. [20]

State of California,
County of Alameda—ss.

Mary T. Marin, being first duly sworn, deposes and says:

That she is one of the defendants above named; that she has read the foregoing Answer and knows the contents thereof; that the facts therein stated are true of her own knowledge, except as to the facts therein stated on information or belief, and as to those facts she believes it to be true.

MARY T. MARIN.

Subscribed and sworn to before me this 14th day of March, 1942.

[Seal] CHAS. O. BRUCE,
Notary Public in and for the County of Alameda, State of California.

(Receipt of Service.)

[Endorsed]: Filed Mar. 16, 1942. [21]

District Court of the United States
Northern District of California
Southern Division

At A Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Friday, the 13th day of November, in the year of our Lord one thousand nine hundred and forty-two.

Present: the Honorable John C. Bowen, D. J. for the Western District of Washington, designated to hold and holding this Court.

No. 22080-W. Civil

[Title of Cause.]

This case came on this day for trial before the Court sitting without a jury. M. Mitchell Bourquin, Esq., and Robert F. Reynolds, Esq. appeared as attorneys for plaintiff, and Charles O. Bruce, Esq. appeared as attorney for the defendant Mary T. Marin. On motion of Mr. Bruce, it is Ordered that Francis T. Cornish, Esq. be and he is hereby associated as attorney for the defendant Mary T. Marin. Mr. Cornish, on behalf of the defendant Mary T. Marin, made a motion to dismiss this action on the grounds stated. Thereupon Mr. Bourquin made a motion to amend the complaint on the face thereof by adding to line 18, paragraph 11, on page 2, after the word "forgings" the words "for naval purposes," which said motion was ordered granted. After further hearing the attorneys, it is Ordered that the motion to dismiss this action be and the same is hereby granted with leave to plaintiff to amend within five (5) days from the date hereof, and plaintiff allowed an exception to the ruling of the Court. Ordered that this case be stricken from the trial calendar. [38]

District Court of the United States
Northern District of California
Southern Division

At A Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Wednesday, the 18th day of November, in the year of our Lord one thousand nine hundred and forty-two.

Present: the Honorable John C. Bowen, D. J. for the Western District of Washington, designated to hold and holding this Court.

No. 22080-W. Civil

[Title of Cause.]

After hearing M. Mitchell Bourquin, Esq., attorney for plaintiff, and Charles O. Bruce, Esq. and Francis T. Cornish, Esq. attorneys for the defendant Mary T. Marin, it is Ordered that the plaintiff be and it is hereby granted leave to amend the complaint on the face thereof by inserting after the word "taken" on line 15, page 2, the words "by plaintiff." Further Ordered that plaintiff be allowed to file an amendment to the complaint herein. Mr. Cornish orally made a motion to dismiss the complaint as amended. After hearing the attorneys, it is Ordered that the further hearing on the motion to dismiss the complaint as amended be continued to November 21, 1942, at 10:30 o'clock A. M. [39]

[Title of District Court and Cause.]

AMENDMENT TO COMPLAINT

Now comes the United States of America, by M. Mitchell Bourquin, Special Assistant to the Attorney General, at the direction and under the authority of the Attorney General of the United States, pursuant to the request of the Acting Secretary of the Navy, and with leave of Court first had and obtained, files this Amendment to Complaint, to read as follows: [40]

I.

Amends Paragraph I to read as follows: That this proceeding is instituted and the lands hereinafter described are taken pursuant to and under the authority of the provisions of the Acts of Congress approved July 29, 1941 (Public Law 192, 77th Congress; 55 Stat., Chap. 328); August 25, 1941 (Public Law 247, 77th Congress; 55 Stat., Chap. 409); August 1, 1888 (25 Stat. 357; U.S.C. Title 40, Sec. 257); February 26, 1931 (46 Stat., 1421; U.S.C. Title 40, Sec. 258a); December 23, 1941 (Public Law 371, 77th Congress; 54 Stat. 676); and March 27, 1942 (Public Law 507, 77th Congress, Second War Powers Act) and any Acts amendatory thereof or supplementary thereto.

II.

Amends Paragraph II to read as follows: That the land hereinafter described is taken and condemned under the authority of the above-mentioned Acts of Congress for the uses and purposes author-

ized by said Acts, and is sought and taken by the plaintiff for the establishment of essential equipment and facilities for the expansion of the American Forge Company, Berkeley, California, for use in the production of steel forgings for naval purposes; that said use of said land constitutes a public use and said lands have been selected by the Acting Secretary of the Navy for acquisition for said purposes and uses above stated and is required for immediate use in order that the necessary work may be begun thereon for carrying out said purposes and uses.

Wherefore, plaintiff asks Judgment as prayed for in said Complaint.

/s/ M. MITCHELL BOURQUIN
Special Assistant to
The Attorney General
Attorney for Plaintiff [41]

Verification

United States of America
Northern District of California
City and County of San Francisco—ss.

M. Mitchell Bourquin, being first duly sworn, deposes and says:

That he is a Special Assistant to the Attorney General of the United States and attorney for the plaintiff in the above entitled action; that he has read the foregoing Amendment to Complaint and knows the contents thereof; that the same is true of his own knowledge except as to matters which

are therein stated on his information or belief, and as to those matters that he believes it to be true;

That the reason this verification is made by affiant and not by the plaintiff is that the plaintiff is a corporation sovereign;

That the sources of affiant's information and the grounds for his belief are the official communications, records, files, and documents received from the Attorney General of the United States and from the Navy Department of the United States.

/s/ M. MITCHELL BOURQUIN

Subscribed and sworn to before me this 18th day of November, 1942.

[Seal] LOUIS V. VASQUEZ

Notary Public in and for the City and County of San Francisco, State of California.

My commission expires December 4, 1943.

[Endorsed]: Filed Nov. 18, 1942. [42]

[Title of District Court and Cause.]

MOTION TO DISMISS

The above entitled action came on regularly for trial before the above entitled Court on the 13th day of November, 1942, M. Mitchell Bourquin, Esq., appearing on behalf of the plaintiff, and Charles O. Bruce, Esq. and Francis T. Cornish, Esq., appearing on behalf of the defendant, Mary T. Marin. [43]

Upon the opening of the action the defendant, Mary T. Marin, moved the Court to dismiss the ac-

tion on the ground that the complaint affirmatively shows that the action is brought to condemn private property for a private use and not for a public use, said motion being based upon the complaint on file herein.

The Court thereupon permitted the plaintiff to amend its complaint on its face, and continued the case to Nov. 18, 1942, for further consideration and argument both as to the amendment and a renewal of the motion to dismiss. The Court, on said Nov. 18, 1942, permitted the plaintiff to amend Paragraphs I and II of its complaint, and thereupon said defendant, Mary T. Marin moved, and she now moves, the Court to dismiss the action upon the ground that the complaint as amended affirmatively shows that the property involved is being condemned for a private use and not for a public use.

Said motion was, and is, based upon the original complaint and the complaint as amended, and each of them, upon the papers, records and files in said action, upon such evidence, oral or documentary, as has been or may be presented, and upon the following authorities:

Cincinnati v. Vester, 281 U.S. 439, 50 S. Ct. 360, 74 L. Ed. 950.

United States v. Shrelkeld, 72 F. (2d) 464.

United States v. 243.22 acres of Land in Town of Babylon, Suffolk County, N. Y., et al., 129 F. (2d) 678.

Ex parte Milligan, 71 U. S. 2; 18 L. Ed. 281.

18 Am. Jr. 632, 633, and cases there cited.
53 A.L.R. 9 et sec.
The Constitution of the United States.

CHAS. O. BRUCE
FRANCIS T. CORNISH
Attorneys for Defendant,
Mary T. Marin.

Dated: Nov. 19, 1942.
(Affidavit of Mailing)

[Endorsed]: Filed Nov. 19, 1942. [44]

District Court of the United States
Northern District of California
Southern Division

At A Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Tuesday, the 24th day of January, in the year of our Lord one thousand nine hundred and forty-two.

Present: the Honorable John C. Bowen, D. J. for the Western District of Washington, designated to hold and holding this Court.

No. 22080-W. Civil

[Title of Cause.]

The motion to dismiss complaint as amended as to defendant Mary T. Marin, came on this day to be heard. After argument by Francis T. Cornish,

Esq. and Charles O. Bruce, Esq., attorneys for the defendant Mary T. Marin, and by Robert F. Reynolds, Esq., on behalf of the attorney for the plaintiff, it is Ordered that said motion to dismiss be and the same is hereby granted. Further Ordered that this case be continued to November 27, 1942, at 9:45 A. M. for the settling and entering of the order dismissing case. [45]

District Court of the United States
Northern District of California
Southern Division

At A Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Friday, the 27th day of November, in the year of our Lord one thousand nine hundred and forty-two.

Present: the Honorable John C. Bowen, D. J. for the Western District of Washington, designated to hold and holding this Court.

No. 22080-W. Civil

[Title of Cause.]

After hearing Francis T. Cornish, Esq. and Charles O. Bruce, Esq. attorneys for the defendant Mary T. Marin, and Robert F. Reynolds, Esq. on behalf of the attorney for plaintiff, it is Ordered

that a judgment of dismissal as to the defendant Mary T. Marin be signed, filed, and entered herein in form as this day submitted in open Court. [46]

In the District Court of the United States in and for the Northern District of California Southern Division.

No. 22080 W

UNITED STATES OF AMERICA,

Plaintiff,

vs.

1.9 acres of land, more or less, in Berkeley, Alameda County, California, SECURITY INVESTMENT COMPANY, a corporation, et als. including MARY T. MARIN,

Defendants.

JUDGMENT OF DISMISSAL

The above entitled action came on regularly for trial before the above entitled Court on the 13th day of November, 1942, M. Mitchell Bourquin, Esq., appearing on behalf of the plaintiff, and Charles O. Bruce, Esq., and Francis T. Cornish, Esq., appearing on behalf of the defendant, Mary T. Marin. [47]

Upon the opening of the action the defendant, Mary T. Marin, moved the Court to dismiss the action on the ground that the complaint affirmatively shows that the action is brought to condemn private property for a private use and not for a

public use, said motion being based upon the complaint on file herein.

The Court thereupon permitted the plaintiff to amend its complaint on its face, and continued the case to November 18, 1942, for further consideration and argument both as to the amendment and a renewal of the motion to dismiss. The Court, on said November 18, 1942, permitted the plaintiff to amend Paragraphs I and II of its complaint, whereupon said defendant, Mary T. Marin, moved the Court to dismiss the action upon the ground that the complaint as amended affirmatively shows that the property involved is being condemned for a private use and not for a public use.

The Court thereupon continued the matter until the 21st day of November, 1942, and on said date again continued the matter until the 24th day of November, 1942, for hearing upon plaintiff's amended complaint and said defendant's motion to dismiss filed herein, and said motion was, upon said last named date, argued and submitted.

The Court being fully advised as to the law and the pleadings in the matter, and it appearing to the Court both from the original complaint and from the amended complaint that this is an action in eminent domain and that the real property described in the pleadings and belonging to said defendant is sought and taken by the plaintiff for the establishment of essential equipment and facilities for the expansion of American Forge Company, Berkeley, California, for [48] use in the production

of steel forgings for naval purposes; and it further appearing to the Court that the use and purpose for which said real property is sought and taken is for a private use and not for a public use, and the plaintiff having been given permission to again amend its complaint and having failed to do so and good cause appearing therefor;

It Is Hereby Ordered, Adjudged and Decreed that the above entitled action be, and it is hereby, dismissed as to the defendant, Mary T. Marin, and as to the real property owned by her and more particularly described in the answer of Mary T. Marin on file herein.

Dated: November 27, 1942.

JOHN C. BOWEN
Judge of the U. S. District Court

Approved and presented by
FRANCIS T. CORNISH
CHAS. O. BRUCE
Attorneys for Defendant Mary T. Marin

Approved
M. MITCHELL BOURQUIN
Attorney for Plaintiff

[Endorsed]: Filed Nov. 27, 1942. [49]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that the United States of America, Plaintiff herein, hereby appeals to the United States Circuit Court of Appeals for the 9th Circuit from the Judgment of Dismissal made and entered in this action on the 27th day of November, 1942.

M. MITCHELL BOURQUIN
Special Assistant to
The Attorney General
Attorney for Plaintiff.

[Endorsed]: Filed Nov. 28, 1942. [50]

[Title of District Court and Cause.]

DESIGNATION OF MATTERS TO BE INCLUDED IN RECORD ON APPEAL

To the Clerk of the above-entitled Court:

The United States, by its undersigned attorney, hereby designates for inclusion in the transcript of record upon appeal all of the pleadings, records, proceedings and evidence with reference to the parcel referred to as Lot. No. 75.

Dated this 2nd day of December, 1942.

M. MITCHELL BOURQUIN
Special Assistant to
The Attorney General
Attorney for Plaintiff

[Endorsed]: Filed Dec. 2, 1942. [51]

In the United States Circuit Court of Appeals
For the Ninth Circuit

UNITED STATES OF AMERICA

Plaintiff,

vs.

1.9 Acres of Land, more or less, in Berkeley, Alameda County, California, SECURITY INVESTMENT COMPANY, a corporation, MARY T. MARIN, et al.

Defendants.

CERTIFIED COPY OF ORDER STAYING PROCEEDING PENDING APPEAL

The United States of America, Plaintiff in the above entitled action, having filed a Notice of Appeal to the United States Circuit Court of Appeals for the 9th Circuit from the Judgment of Dismissal made and entered in said action on November 27, 1942, and good cause appearing therefor,

It Is Hereby Ordered that the operation of said Judgment of Dismissal and all other and further proceedings, to the extent that the same affects Defendant, Mary T. Marin, and the real property owned by her and more particularly described in the Complaint on file herein, be and the same are hereby stayed pending the decision of the said Court on said appeal, and until such decision becomes final.

Dated: November 30th, 1942.

CURTIS D. WILBUR
Judge, United States Circuit Court

[Endorsed]: Filed Nov. 30, 1942. Paul P. O'Brien, Clerk. [52]

[Title of Circuit Court of Appeals and Cause.]

AFFIDAVIT

State of California
City and County of San Francisco—ss.

M. Mitchell Bourquin, being first duly sworn, deposes and says:

That he is a Special Assistant to the Attorney General of the United States, and Attorney for the Plaintiff in the above entitled cause; that on November 27, 1942, a Judgment of Dismissal was made and entered in Cause #22080-W in the District Court of the United States, in and for the Northern District of California, Southern Division; that on November 28, 1942, at the request of the Attorney General, a Notice of Appeal to the United States Circuit Court of Appeals for the Ninth Circuit from said Judgment of Dismissal was filed in said District Court; that under the Complaint, the Declaration of Taking and Judgment on the Declaration of Taking filed in said cause, plaintiff has been in possession of the property subject of said cause and has commenced the [53] construction and develop-

ment of the public use and project described in said complaint and the same is now nearing completion; that if development of said use and project is interrupted or terminated, the plaintiff will suffer irreparable injury; that this appeal is well taken and not filed for purposes of delay.

/s/ M. MITCHELL BOURQUIN

Subscribed and sworn to before me this 30th day of November, 1942.

[Seal] LOUIS V. VASQUEZ

Notary Public in and for the City and County of San Francisco, State of California.

My Commission Expires December 4, 1943.

[Endorsed]: Affidavit and Order Staying Proceeding, etc., Filed Nov. 30, 1942. Paul P. O'Brien, Clerk.

A True Copy
Attest: Dec. 21, 1942.
[Seal] PAUL P. O'BRIEN,
Clerk.

[Endorsed]: Filed Dec. 21, 1942. [54]

In the District Court of the United States in and for the Northern District of California Southern Division

No. 22080-W

UNITED STATES OF AMERICA,

Plaintiff,

vs.

1.9 Acres of Land, more or less, in Berkeley, Alameda County, California, SECURITY INVESTMENT COMPANY, et al.,

Defendants.

ORDER EXTENDING TIME FOR FILING RECORD ON APPEAL AND DOCKETING ACTION IN CIRCUIT COURT OF APPEALS. (Rule 73 (g))

On Application of M. Mitchell Bourquin, Special Assistant to the Attorney General, Attorney for Plaintiff in the above entitled action, and good cause appearing therefor;

Now, Therefore It Is Ordered that the time of Plaintiff for filing record on appeal and for docketing the above entitled action on appeal for the Circuit Court of Appeals, 9th Circuit, in pursuance of Notice of Appeal heretofore filed by Plaintiff, be and the same is hereby extended to and including the 28th day of January, 1943. [55]

The within Order is made upon the provisions of

Rule 73 (g) in the Rules of Federal Court Procedure.

Dated: January 6th, 1943.

MARTIN I. WELSH
Judge, United States District Court, Northern District of California.

[Endorsed]: Filed Jan. 6, 1943. [56]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO TRANSCRIPT OF RECORD ON APPEAL

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 56 pages, numbered from 1 to 56, inclusive, contain a full, true, and correct transcript of the records and proceedings in the case of United States of America, vs. 1.9 Acres of Land, etc., Berkeley, etc., et al. No. 22080-W, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of Six Dollars and Sixty-Five Cents ($6.65) and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at

San Francisco, California, this 26th day of January A. D. 1943.

[Seal] WALTER B. MALING
Clerk
WM. J. CROSBY
Deputy Clerk. [57]

[Endorsed]: No. 10357. United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Mary T. Marin, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed January 28, 1943.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
For the Ninth Circuit

No. 10357

UNITED STATES OF AMERICA,
Plaintiff,

vs.

1.9 Acres of Land, more or less, in Berkeley, Alameda County, California, SECURITY INVESTMENT COMPANY, a corporation, MARY T. MARIN, et al.,
Defendants.

ORDER STAYING PROCEEDING PENDING APPEAL

The United States of America, Plaintiff in the above entitled action, having filed a Notice of Appeal to the United States Circuit Court of Appeals for the 9th Circuit from the Judgment of Dismissal made and entered in said action on November 27, 1942, and good cause appearing therefor,

It Is Hereby Ordered that the operation of said Judgment of Dismissal and all other and further proceedings, to the extent that the same affects Defendant, Mary T. Marin, and the real property owned by her and more particularly described in the Complaint on file herein, be and the same are hereby stayed pending the decision of the said Court on said appeal, and until such decision becomes final.

Dated: November 30, 1942.

CURTIS D. WILBUR
Judge, United States Circuit Court.

[Endorsed]: Filed Nov. 30, 1942. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

AFFIDAVIT

State of California,
City and County of San Francisco—ss.

M. Mitchell Bourquin, being first duly sworn, deposes and says:

That he is a Special Assistant to the Attorney General of the United States, and Attorney for the Plaintiff in the above entitled cause; that on November 27, 1942, a Judgment of Dismissal was made and entered in Cause #22080-W in the District Court of the United States, in and for the Northern District of California, Southern Division; that on November 28, 1942, at the request of the Attorney General, a Notice of Appeal to the United States Circuit Court of Appeals for the Ninth Circuit from said Judgment of Dismissal was filed in said District Court; that under the Complaint, the Declaration of Taking and Judgment on the Declaration of Taking filed in said cause, plaintiff has been in possession of the property subject of said cause and has commenced the construction and

development of the public use and project described in said complaint and the same is now nearing completion; that if development of said use and project is interrupted or terminated, the plaintiff will suffer irreparable injury; that this appeal is well taken and not filed for purposes of delay.

M. MITCHELL BOURQUIN

Subscribed and sworn to before me this 30th day of November, 1942.

[Seal] LOUIS V. VASQUEZ

Notary Public in and for the City and County of San Francisco, State of California.

My Commission expires December 4, 1943.

[Endorsed]: Filed Jan. 28, 1943. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

APPELLANT'S STATEMENT OF POINTS

The Appellant, United States of America, makes the following statement of points on which Appellant intends to rely upon the appeal herein:

(1) The District Court erred in dismissing the action.

(2) The District Court erred in holding that the land was not being taken for public use.

(3) The District Court erred in holding that the

Complaint and Amended Complaint did not state a public use.

UNITED STATES OF AMERICA
By M. MITCHELL BOURQUIN
Special Assistant to the Attorney General.

[Endorsed]: Filed Feb. 9, 1943. Paul P. O'Brien, Clerk.

No. 10357

In the United States Circuit Court of Appeals for the Ninth Circuit

UNITED STATES OF AMERICA, APPELLANT

v.

MARY T. MARIN, APPELLEE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

BRIEF FOR THE UNITED STATES

NORMAN M. LITTELL,
Assistant Attorney General.

M. MITCHELL BOURQUIN,
Special Assistant to the Attorney General, San Francisco, California.

VERNON L. WILKINSON,
ROGER P. MARQUIS,
Attorneys, Department of Justice, Washington, D. C.

FILED

APR - 6 1943

PAUL P. O'BRIEN,
CLERK

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In the United States Circuit Court of Appeals for the Ninth Circuit

No. 10357

UNITED STATES OF AMERICA, APPELLANT

v.

MARY T. MARIN, APPELLEE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

BRIEF FOR THE UNITED STATES

OPINION BELOW

The district court did not write an opinion. Its judgment, stating the reason for dismissal, is printed in the record at pages 34 to 36.

JURISDICTION

This is an appeal from a judgment of dismissal entered November 27, 1942 (R. 34–36). Notice of appeal was filed November 28, 1942 (R. 37). The jurisdiction of the district court was invoked under the Act of August 1, 1888, c. 728, 25 Stat. 357, 40 U. S. C. sec. 257 (R. 3). The jurisdiction of this Court is invoked under section 128 of the Judicial Code, as amended, 28 U. S. C. sec. 225 (a).

QUESTIONS PRESENTED

1. Whether the Constitution empowers the United States to condemn land for use by a private corporation in the production of steel forgings for naval purposes.

2. Whether a judgment on a declaration of taking is final and appealable and, if so, whether, after the time for appeal has expired, such judgment is a conclusive determination of the issue as to public use.

STATUTES INVOLVED

The material portions of the Act of July 29, 1941, c. 328, 55 Stat. 608; Act of August 25, 1941, c. 409, 55 Stat. 669, and the Second War Powers Act of March 27, 1942, c. 199, Public No. 507, 77th Cong., 2d Sess., are set out in the appendix *infra* p. 16–18.

STATEMENT

This proceeding was commenced on February 9, 1942, by the filing of the Government's complaint to condemn 1.9 acres of land in Berkeley, California. At the same time, a declaration of taking was filed pursuant to the Act of February 26, 1931, c. 307, 46 Stat. 1421, 40 U. S. C. sec. 258a, and estimated compensation of $26,651.00 was deposited in court. Of the sum deposited, $1,200.00 was allocated to parcel 75 owned by Mary T. Marin. On the same day, an ex parte judgment was entered declaring that the United States was entitled to acquire the property for the purposes stated, confirming the passage of title by the declaration of taking, and ordering the immediate delivery of possession (R. 2–21).

Mary T. Marin filed an answer on March 16, 1942, asserting ownership of Lot 75 and alleging that the taking was not for public use (R. 21–25). Trial as to parcel 75 was called for November 13, 1942. Motion to dismiss was made and the Government was permitted to amend the complaint (R. 26). As amended, the complaint alleged that the proceedings were brought pursuant to six designated statutes and alleged (paragraph II):

> That the land hereinafter described is taken and condemned under the authority of the above-mentioned Acts of Congress for the uses and purposes authorized by said Acts, and is sought and taken by the plaintiff for the establishment of essential equipment and facilities for the expansion of the American Forge Company, Berkeley, California, for use in the production of steel forgings for naval purposes; that said use of said land constitutes a public use and said lands have been selected by the Acting Secretary of the Navy for acquisition for said purposes and uses above stated * * * (R. 28–29).

The motion to dismiss was renewed and, the Government having declined to amend further, judgment of dismissal was entered on November 27, 1942 (R. 30–36). After setting forth the purpose of the taking, the judgment stated (R. 36):

> * * * and it further appearing to the Court that the use and purpose for which said real property is sought and taken is for a private use and not for a public use * * *.

The Government had gone into possession of the property in February 1942, had commenced construc-

tion, and at the time Lot 75 was dismissed from the proceeding the project was nearing completion. In fact, the other 21 lots had already been settled by stipulation. In order to prevent irreparable injury the Government promptly filed a notice of appeal (R. 37) and asked this Court for an order staying further proceedings until after the appeal is heard. Judge Wilbur granted such an order on November 30, 1942 (R. 38–40).

SPECIFICATIONS OF ERRORS

The district court erred (R. 46–47):

(1) In dismissing the amended complaint.

(2) In holding that the land was not being taken for public use.

(3) In holding that the complaint and amended complaint did not state a public use.

ARGUMENT

I

Congress has authorized the Secretary of the Navy to acquire lands for use by a private corporation in the production of steel forgings for naval purposes

Congress has expressly authorized the Secretary of the Navy to acquire land for the purpose of expanding private facilities to promote the war effort. The Act of July 29, 1941, c. 328, 55 Stat. 608 appropriated funds for the building and equipping of naval vessels, the repair, alteration or conversion of vessels for naval use, and for the production of ordnance material, etc. The Act authorized execution of the work at "either

private or naval establishments" and provided (Section 2):

> The authority herein granted shall include the authority to acquire lands at such locations as the Secretary of the Navy, with the approval of the President, may deem best suited to the purpose, erect or extend buildings, and acquire the necessary machinery and equipment, and shall be in addition to all authority heretofore granted for these purposes.

A month later in the First Supplemental National Defense Appropriation Act of August 25, 1941, c. 409, 55 Stat. 669, appropriation was made for the necessary tools, equipment and facilities "at naval establishments or private plants" for the production of armor, armament and ammunition and $160,000,000 was appropriated "For essential equipment and facilities of all kinds at either private or naval establishments for the repair and conversion of ships, including the necessary purchase of land." 55 Stat. at 680.

The Second War Powers Act of March 27, 1942, Public No. 507, 77th Cong., 2d sess., authorized various government officers, including the Secretary of the Navy, to acquire by condemnation "any real property * * * that shall be deemed necessary, for military, naval, or other war purposes, * * * and may dispose of such property or interest therein by sale, lease, or otherwise, in accordance with section 1 (b) of the Act of July 2, 1940 (54 Stat. 712). The Act of July 2, 1940, c. 508, 54 Stat. 712, had authorized the Secretary of War to provide for the manufacture, etc., of mili-

~~Act of July 2, 1940" (54 Stat. 712). The Act of July 2,~~

tary equipment at public or private plants and provided, section 1 (b):

> (b) The Secretary of War is further authorized, with or without advertising, to provide for the operation and maintenance of any plants, buildings, facilities, utilities, and appurtenances thereto constructed pursuant to the authorizations contained in this section and section 5, either by means of Government personnel or through the agency of selected qualified commercial manufacturers under contracts entered into with them, and when he deems it necessary in the interest of the national defense, to lease, sell, or otherwise dispose of, any such plants, buildings, facilities, utilities, appurtenances thereto, and land, under such terms and conditions as he may deem advisable, and without regard to the provisions of section 321 of the Act of June 30, 1932 (47 Stat. 412).

From these statutes, it is obvious that the Secretary of the Navy was empowered to promote the repair and enlargement of the Navy by the expansion of private facilities, including the acquistion of land for such purpose.[1] In fact, the primary purpose of the Act of July 29, 1941, c. 328, 55 Stat. 608 was to authorize appropriations for additional naval construction and repair facilities at private yards and industries. The House Committee on Naval Affairs made a detailed

[1] The authority to "acquire" or to "purchase" lands includes, of course, the power to acquire by condemnation, for the Act of August 1, 1888, c. 728, 25 Stat. 357, 40 U. S. C. sec. 257, embraces every case where a government officer is "authorized to procure real estate for the erection of a public building or for other public uses."

report on this matter indicating that of the $460,000,000 applicable to construction and repair of naval vessels only $108,000,000 would be spent on naval yards. H. Rept. No. 934, 77th Cong. 1st sess. (1941).[2] The Committee report listed steel forgings and castings as one of the products "of an already expanded private industry [which] have developed or are developing serious bottlenecks which must be eliminated by further expansion." Ibid., p. 3. And in table 4 of the report (p. 10) the American Forge Company, Niles, California, was listed among the companies "manufacturing facilities for forgings and castings" which might be expected to expand. During the debates in Congress the necessity of the immediate construction of additional facilities at private plants so as to meet the requirements of the expanding Navy was emphasized and particular reference was made to the demand for forgings and castings. 87 Cong. Rec. pp. 6133–6135. Thus, Congress passed the Act of July 29, 1941, for the specific purpose of acquiring the necessary lands and constructing the required buildings so as to enlarge the facilities of private companies engaged in the production of naval materials.

One of the purposes of enactment of Title II of the Second War Powers Act was to confer on the Secretary of the Navy and other government officers the same power to condemn real property for war purposes that had earlier been conferred on the Secretary of War. By the Act of July 2, 1940, the War Depart-

[2] Copies of this report are submitted herewith for the convenience of the court.

ment had been authorized to acquire land for the expansion of privately owned plants as well as government depots. At the time, this authority was particularly important in promoting the tremendous expansion of the aircraft industry. By 1942 it was evident that, among other things, this authority should be granted to other government officers. See 88 Cong. Rec. p. 653. As stated by the Senate Committee, "The necessity for extending the power of the Government to acquire real property during the war period is evident." H. Rept. No. 1765, 77th Cong., 2d sess. (1942) p. 6.[3]

Hence, there can be no dispute that the Secretary of the Navy was specifically authorized to condemn land to be used for the expansion of private forge and casting establishments. And the declaration of taking and complaint expressly declare that the land here involved is being taken for that very purpose (R. 2–13). The Acting Secretary's statement of the purpose for which the land is being acquired is conclusive upon the appellee. *United States* v. *Montana,* C. C. A. 9, No. 10210, decided March 6, 1943. So also the administrative determination that it is necessary and advantageous to the Government to condemn this land is not subject to judicial review. *Oakland* v. *United States,* 124 F. 2d 959 (C. C. A. 9, 1942), certiorari denied 316 U. S. 679 (1942); *United States* v. *243.22 Acres of Land,* 129 F. 2d 678 (C. C. A. 2, 1942), certiorari denied *sub nom. Justine Lambert* v. *United States,* 87 L. Ed. Adv. Op. 402.

[3] Copies of this report are submitted herewith.

II

Congress has the constitutional power to authorize the acquisition of lands for use by a private person for war purposes

In *United States* v. *243.22 Acres of Land,* 129 F. 2d 678 (C. C. A. 2, 1942) certiorari denied sub nom. *Justine L. Lambert* v. *United States,* 87 L. Ed. Adv. Op. 402, the contention that the taking of land for use by a private company was not a taking for a public use was rejected. The proceeding was brought under the Act of July 2, 1940. The landowner attempted to support his contention by evidence that the land was to be used by and title was to be transferred to the Republic Aviation Corporation. This evidence was excluded as immaterial and the ruling was affirmed on appeal, the court stating "The decision of the Secretary of War is not open to judical inquiry. That is fortunate, for if it were open, the ensuing delay would delight our country's enemies."

The instant case presents an identical situation. The Acting Secretary of the Navy has determined that it is necessary to take appellee's lands for naval purposes. The fact that the desired result will be accomplished by use of private facilities rather than by government agencies is immaterial. The authority of the Federal Government to exercise the power of eminent domain may be used whenever it is necessary or appropriate to acquire land in the execution of any of the powers granted by the Constitution. *Kohl* v. *United States,* 91 U. S. 367 (1875); *United States* v. *Gettysburg Electric Railway,* 160 U. S. 668

(1896); *Oklahoma* v. *Atkinson,* 313 U. S. 508 (1941); *Minnesota* v. *United States,* 125 F. 2d 636, 640 (C. C. A. 8, 1942); *Oakland* v. *United States,* 124 F. 2d 959, 964 (C. C. A. 9, 1942), certiorari denied 316 U. S. 679 (1942).

It cannot be doubted that the Act of July 29, 1941, and the Second War Powers Act are constitutional under the Federal Government's defense and war powers. U. S. Const., Art. I, sec. 8. No argument is needed to show that the war required the immediate expansion of the Navy by every possible means and that, under the conditions existing in 1941, such expansion might best be accomplished by utilizing and expanding private industry. Limitation to government-operated plants would have seriously impeded the war effort.

The Constitution does not impose any such limitation. On the contrary "when the legislature has declared the use or purpose to be a public one, its judgment will be respected by the courts, unless the use be palpably without reasonable foundation." *United States* v. *Gettysburg Electric Railway,* 160 U. S. 668, 680 (1896). Congress may use any appropriate means to accomplish a legitimate purpose. *Luxton* v. *North River Bridge Co.,* 153 U. S. 525, 529–530 (1895). The fact that in execution of a public purpose, lands condemned are sold to individuals does not render the taking invalid. *Brown* v. *United States,* 263 U. S. 78, 81–82 (1923). Clearly Congress has the power to protect the nation by any means which the necessities of

the situation may require even though accomplishment involves private use of lands condemned. In *Highland* v. *Russell Car Co.,* 279 U. S. 253 (1929), Justice Butler, in sustaining a 1917 coal price regulation as applied to a manufacturer of snow plows for railroads, stated (p. 260): "Unquestionably the production of such equipment was, in the state of war then prevailing, a public use for which coal and other private property might have been taken by exertion of the power of eminent domain." If the taking of coal for use by a private manufacturer in the production of snow plows for use by railroads is a public use, obviously the taking of land for use in the production of naval equipment is a public use.

The authorities cited by appellee to support her motion (R. 31) do not sustain the dismissal. *United States* v. *243.22 Acres* directly supports the Government's position (see *supra* p. 9). In *United States* v. *Threlkeld,* 72 F. 2d 464 (C. C. A. 10, 1934), certiorari denied 293 U. S. 620, the taking was similarly sustained. In *Cincinnati* v. *Vester,* 281 U. S. 439 (1930) the decision was based upon the Ohio statute, and the court specifically declined to pass upon the constitutional question. *Ex Parte Milligan,* 4 Wall. 2 (1866), relating to the war power as applied to the availability of writs of habeas corpus is obviously irrelevant.

It follows that the court below erred in dismissing the Government's complaint.

III

If the judgment on the declaration of taking was appealable, it is res judicata upon the right of the United States to acquire the property

Pursuant to the usual practice in declaration of taking cases the district court on February 9, 1942, entered an ex parte judgment declaring that the United States was entitled to acquire the property for the purposes stated, confirming the passage of title by the declaration of taking, and ordering the immediate delivery of possession (R. 17–21). In *Oakland* v. *United States,* 124 F. 2d 959 (C. C. A. 9, 1942) the Government contended that a similar judgment was not final and appealable and hence requested that the appeal be dismissed. However, this Court affirmed the decision rather than dismissing the appeal. Shortly thereafter a landowner appealed to the Circuit Court of Appeals for the Second Circuit from a judgment of condemnation before compensation had been determined. *United States* v. *243.22 Acres of Land,* 129 F. 2d 678 (C. C. A. 2, 1942). The United States contended that such appeal should be dismissed on the ground that a condemnation judgment is final and appealable only when all questions of title and damages have been determined. *Luxton* v. *North River Bridge Co.,* 147 U. S. 337, 341 (1893); *Southern Ry. Co.* v. *Postal Telegraph Co.,* 179 U. S. 641, 643 (1901); *Grays Harbor Co.* v. *Coats-Fordney Co.,* 243 U. S. 251, 256 (1917); *Wick* v. *Superior Court,* 278 U. S. 575 (1928); *Dieckmann* v. *United States,* 88 F. 2d 902

(C. C. A. 7, 1937). The court, however, rejected this contention placing some reliance on the action taken by this Court in the *Oakland* case. See 129 F. 2d at p. 683.

In November 1942 the Circuit Court of Appeals for the First Circuit held that a judgment on a declaration of taking was final and appealable. *Puerto Rico Railway Light and Power Company* v. *United States,* 131 F. 2d 491 (C. C. A. 1, 1942). It held that *United States* v. *243.22 Acres of Land, supra,* was squarely in point and also relied on the *Oakland* decision. The court recognized that the judgment on the declaration of taking does not pass title but stated that in granting the Government's motion for possession "The court necessarily has to decide, as it did here, that the taking was duly authorized by law." 131 F. 2d at p. 494, fn. 2. Thus, the *Puerto Rico* case holds that entry of the judgment on the declaration of taking is necessarily a decision that the taking is for public use.

In the instant case the judgment on the declaration was entered on February 9, 1942 (R. 17–21). The time for appeal therefrom expired on May 9, 1942. If, as stated in the *Puerto Rico* case, entry of the judgment necessarily included a decision that the taking was for public use and such judgment was final, then the judgment was conclusive and appellee's motion to dismiss made on November 13, 1942 (R. 25–26), should have been denied.

Nevertheless, the Government adheres to its position that the judgment on the declaration of taking is not

final and appealable. As pointed out in the *Oakland* brief (p. 14) the judgment is useful for recording purposes. It does not pass title. The reasoning of the court in the *243.22 Acres* case seems to rest upon a failure to recognize this fact because the only factual distinction of *Luxton* v. *North River Bridge* and other cases which follow the same rule lies in application of the Declaration of Taking Act. The Government believes that the judgment on the declaration of taking does not, as the court held in the *Puerto Rico* case, finally decide the question of public use but rather, as this court held in the *Oakland* case, that question is left open for future decision. No substantial distinction appears between an order overruling a motion to dismiss in the ordinary case and the order denying the motion to vacate the judgment on the declaration of taking involved in the *Oakland* case or the similar order in the *Puerto Rico* case.[4] An order overruling a motion to dismiss or a demurrer is, of course, not final and appealable.[5] No reason appears why the order is of a different nature when a declaration of taking is involved.

The United States submits, therefore, that neither a judgment on a declaration of taking nor an order overruling a motion to vacate such judgment is appeal-

[4] An order denying a motion to vacate a nonappealable order is, of course, not appealable. *Republic Supply Co. of California* v. *Richfield Oil Co.*, 74 F. 2d 909 (C. C. A. 9, 1935).

[5] An order sustaining a motion to dismiss is also interlocutory. Appeal lies only when, as in the present case, the order is followed by a final judgment dismissing the proceeding. See *Western Electric Co.* v. *Patent Reproducer Corporation*, 37 F. 2d 14 (C. C. A. 2, 1930), and cases there cited.

able. It follows that, as this Court held in the *Oakland* case, the question of public use was properly raised by the motion to dismiss made in November 1942.

CONCLUSION

It is submitted that the judgment of the district court should be reversed.

Respectfully,

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MARCH 1943.

APPENDIX

The Act of July 29, 1941, Chapter 328, 55 Stat. 608, is as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, $300,000,000 for essential equipment and facilities at either private or naval establishments for building or equipping any complete naval vessel or portion thereof heretofore or hereafter authorized; $160,000,000 for essential equipment and facilities at either private or naval establishments for repairing, altering, or converting any vessel operated by the Navy or being prepared for naval use; and $125,000,000 for essential equipment and facilities for the manufacture or production of ordnance material, munitions, and armor at either private or naval establishments.
>
> SEC. 2. The authority herein granted shall include the authority to acquire lands at such locations as the Secretary of the Navy, with the approval of the President, may deem best suited to the purpose, erect or extend buildings, and acquire the necessary machinery and equipment, and shall be in addition to all authority heretofore granted for these purposes.

The Act of August 25, 1941, Chapter 409, 55 Stat. 669, 680 provides:

> Construction and machinery: The limitation on obligations for tools, facilities, and equipment for building or equipping any complete

naval vessel or portion thereof contained in title VI of the Naval Appropriation Act for the fiscal year 1941 (Fourth Supplemental National Defense Appropriation Act, 1941) is increased to $800,000,000.

Armor, armament, and ammunition: The Secretary of the Navy is authorized to transfer $11,000,000 of the funds heretofore appropriated under this heading to the War Department for War Department facilities for the loading and assembling of 20-millimeter ammunition and the limitation of obligations for the necessary tools, equipment, and facilities at naval establishments or private plants for the manufacture or production of ordnance material, munitions, and armor contained in title VI of the Naval Appropriation Act for the fiscal year 1941 (Fourth Supplemental National Defense Appropriation Act, 1941) is increased to $425,000,000.

The Second War Powers Act of March 27, 1942, Chapter 199, Public Law 507, 77th Congress, 2d Session, provides:

Title II—Acquisition and Disposition of Property

SEC. 201. The Act of July 2, 1917 (40 Stat. 241), entitled "An Act to authorize condemnation proceedings of lands for military purposes," as amended, is hereby amended by adding at the end thereof the following section:

"SEC. 2. The Secretary of War, the Secretary of the Navy, or any other officer, board, commission, or governmental corporation authorized by the President, may acquire by purchase, donation, or other means of transfer, or may cause proceedings to be instituted in any court having jurisdiction of such proceedings, to acquire by condemnation, any real property, temporary use thereof, or other interest therein, together with any personal property located thereon or used

therewith, that shall be deemed necessary, for military, naval, or other war purposes, such proceedings to be in accordance with the Act of August 1, 1888 (25 Stat. 357), or any other applicable Federal statute, and may dispose of such property or interest therein by sale, lease, or otherwise, in accordance with section 1 (b) of the Act of July 2, 1940 (54 Stat. 712). Upon or after the filing of the condemnation petition, immediate possession may be taken and the property may be occupied, used, and improved for the purposes of this Act, notwithstanding any other law. Property acquired by purchase, donation, or other means of transfer may be occupied, used, and improved, for the purposes of this section prior to the approval of title by the Attorney General as required by section 355 of the Revised Statutes, as amended."

Section 1 of the Act of July 2, 1940, 54 Stat. 712, Chapter 508, provides:

(b) The Secretary of War is further authorized, with or without advertising, to provide for the operation and maintenance of any plants, buildings, facilities, utilities, and appurtenances thereto constructed pursuant to the authorizations contained in this section and section 5, either by means of Government personnel or through the agency of selected qualified commercial manufacturers under contracts entered into with them, and when he deems it necessary in the interest of the national defense, to lease, sell, or otherwise dispose of, any such plants, buildings, facilities, utilities, appurtenances thereto, and land, under such terms and conditions as he may deem advisable, and without regard to the provisions of section 321 of the Act of June 30, 1932 (47 Stat. 412).

U. S. GOVERNMENT PRINTING OFFICE: 1943

No. 10,357

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

UNITED STATES OF AMERICA,
Appellant,

vs.

MARY T. MARIN,
Appellee.

Appeal from the District Court of the United States for the Northern District of California, Southern Division.

BRIEF FOR APPELLEE.

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BRIEF FOR APPELLEE.

STATEMENT OF FACTS.

The facts are not controverted. Congress enacted certain statutes referred to in the complaint and the Secretary of the Navy executed a declaration of taking pursuant to the statutes. Both the statutes and the declaration of taking are set forth in the transcript of record and the appendix to appellant's opening brief. The controversy arises over the interpretation of these statutes and this declaration. Congress appropriated money "for essential equipment and facilities at either private or naval establishments" and granted the Secretary of the Navy authority to acquire lands, erect or extend buildings and acquire the necessary

machinery and equipment, for three specified purposes: (1) building or equipping any complete naval vessel or portion thereof; (2) repairing, altering or converting any naval vessel; and (3) the manufacture or production of ordnance material, munitions or armor.

Act of July 29, 1941, Chapter 328, 55 Stat. 608.

The Second War Power Act empowered the Secretary of the Navy to acquire real property or any temporary use thereof or other interest therein "that shall be deemed necessary for military, naval or other war purposes", and, after acquiring that interest, to dispose of the property by sale, lease or otherwise in accordance with Section 1 (b) of the Act of July 2, 1940 (54 Stat. 712). Such disposition may be made with or without advertising, after the property has been improved, used or occupied, and may provide for the operation and maintenance of plants, buildings, etc. constructed by the government through private interests under contract entered into with the government, or, when it will promote the National defense, under such terms as the Secretary of the Navy might see fit.

Second War Powers Act of March 27, 1942, Chapter 199, Public Law 507, 77th Congress, 2nd Session.

Purporting to act under this Congressional authority the Secretary of the Navy made a written declaration of taking appellee's property "for immediate public use by the United States of America for the establishment of essential equipment and facilities for

the expansion of the American Forge Company, Berkeley, California, for use in the production of steel forgings" (R. 11-15).

The declaration of taking was filed contemporaneously with the complaint and the District Court made its judgment giving the United States immediate title in fee simple absolute, declaring the public purpose to be "for use by the United States of America for the establishment of essential equipment and facilities for the expansion of the American Forge Company, Berkeley, California, for the use in production of steel forgings, and for such other uses as may be authorized by Congress or by executive order" (R. 17-21).

The complaint therewith filed alleged that the property was taken by the United States "for the establishment of essential equipment and facilities for the expansion of the American Forge Company, Berkeley, California, for use in the production of steel forgings for naval purposes" (R. 3).

The complaint is silent as to whether the property was to be used by the United States of America or by the American Forge Company alone, nor did it allege that the American Forge Company was under contract with the United States of America, nor under what terms, if any, the United States of America was disposing of the property, if it was disposing of the property, to American Forge Company (R. 3).

Although appellant had ample opportunity to do so, its complaint was not amended to set forth, as is

asserted in its brief, that the government "had commenced construction, and at the time lot 75 was dismissed from the proceeding the project was nearing completion". This situation was not brought to the attention of the District Court, nor is there anything before this Court to show whether any building or equipment has been placed on the land, or, if so, by whom, or under what terms.

We are, therefore, concerned only with these questions: (1) Does the complaint in condemnation set forth a taking pursuant to the statutes of the United States therein referred to? (2) Has Congress the constitutional power to authorize the Secretary of the Navy to condemn private property for use by another private owner under contract with the United States to manufacture items for National defense? (3) Has Congress the power, under the Constitution of the United States, to authorize the Secretary of the Navy to condemn private property for the purpose of disposing of it to another private interest "under such terms and conditions as he may deem it advisable"? (4) Has the United States Government the power under the Constitution to direct the condemnation of private property for the avowed purpose of forthwith disposing of it to another private owner?

THE UNITED STATES SEEKS APPELLEE'S PROPERTY FOR A PRIVATE PURPOSE.

The statutory provisions set forth in the appendix to appellant's opening brief and summarized in the

statement of the case provide for a taking *for the use of the United States* and provide for the transfer by the United States *after the taking,* either to a private concern under contract to manufacture naval equipment or under such other terms and provisions as the Secretary of the Navy may see fit. Although given two opportunities to amend (R. 35, 36) appellant nowhere sets forth in its complaint that the land was taken *for the use by the United States* nor did it set forth that the American Forge Company was *under contract with the United States* to produce steel forgings for naval purposes, nor under what other terms it was disposing of this property to American Forge Company. If all of the facts set forth in the complaint were established, the property is taken for the primary purpose of enlarging the American Forge Company, that the American Forge Company may produce steel forgings for naval purposes more readily than it could without the property. Under the allegations of the complaint, and the proofs that would be submitted in support of these allegations, no concern other than the American Forge Company could use appellee's property to make forgings for naval purposes, and American Forge Company could not be required to make steel forgings for naval purposes. The result of a judgment for condemnation pursuant to the allegations of the complaint would be that appellee would be deprived of her property and American Forge Company would acquire it; yet no steel forgings for naval purposes need ever be produced nor the land used for the production of steel forgings for naval purposes. Such a judgment, rather than carry-

ing out the purposes of the Congressional authorization, would defeat those purposes and take appellee's property under forced sale, contrary to appellee's wishes, for uses unauthorized by the statute, and provide to American Forge Company something that, for all that appears, American Forge Company may have long desired, yet not have been able to accomplish legally.

On the contrary, if we concede for the purposes of argument that the condemnation proceeding is pursuant to the statutes, and concede for the purposes of argument, what does not appear, that the Secretary of the Navy is disposing of appellee's property "under such terms and conditions as he may deem it advisable", or to enable American Forge Company to carry out more readily a contract for war materials between itself and the United States, Congress still has not the power under the United States Constitution to condemn for this purpose.

Every government has the inherent right to condemn private property to execute its functions. This right is limited by the constitutional provision, that private property shall not be taken for a public use without just compensation being first paid.

United States Constitution, Amendment 5.

This constitutional limitation has been construed to mean that private property cannot be taken for a private use under any circumstances.

Kohl v. United States, 91 U. S. 367.

Excess condemnation has been declared constitutional where the excess is taken for the purpose of

protecting the public improvement, but declared a taking without due process of law where a state seeks to condemn for the purpose of resale to private individuals.

Cincinnati v. Vester, 281 U. S. 439.

Three decisions appear to cast doubt upon this rule. In *United States v. 243.22 Acres,* 129 F. (2d) 678 (C.C.A. 2, 1942), the owner sought to prove that the Secretary of War *intended* to resell the land to a private company. This proof was rejected. The taking, however, was for a public purpose, to-wit: the establishment of an airport. The use for which it was taken was use by the United States. The proof sought to question the manner in which the United States would put the property to a public use after it was taken. It was held that evidence of the state of mind of the Secretary of War, *apart from his expressed declaration of taking,* was not admissible. The taking by the United States for the pre-expressed purpose of enlarging a private company's resources, independent of any obligation that such company might owe the United States, was not involved.

In *Brown v. United States,* 263 U. S. 78, the power to condemn to establish a town site as a substitute for one flooded was sustained. There the property was available for purchase and use *by a group* of individuals. The taking was not limited to the resale to one specific individual nor to the use by one specific company and none other. The expressed purpose of taking was for a town site of benefit to many square miles of surrounding country and in excess of 1000

persons. The establishment of the town site was an integral part of another public project, the construction of a dam for power, irrigation and flood control purposes.

In *Highland v. Russell Car Company,* 279 U. S. 253, sustaining a 1917 coal price regulation, the decision was based upon the due process clause. The court carefully pointed out that the owner of the coal was not required to part with it, but merely required to sell at a price consistent with the interests of national defense, if he did sell. The instant statute, rather than regulating the price at which respondent could sell her property if she wished, purports to compel her to sell it to a private owner against her wish.

None of the cases cited by counsel conflict with the rule established in *Cincinnati v. Vester,* supra, that a taking of private property for resale to another individual for private use and private profit is unconstitutional. This rule is sustained by *Opinion of Justices,* 204 Mass. 607, 27 L. R. A. (N. S.) 483.

The case in which appellant places most confidence is *United States v. 243.22 Acres,* supra, and this language of the Circuit Court of Appeals—"a decision of the Secretary of War is not open to judicial inquiry. That is fortunate, for if it were open, the ensuing delay would delight our country's enemies". Mr Chief Justice Chase with three associates once expressed the thought that in time of war much more latitude must be given to Congress in the exercise of the war powers, and citizens must expect infringement of their peacetime constitutional rights. This opinion was written

because Mr. Justice Chase, with a minority of the court, disagreed with the majority opinion in *Ex parte Milligan,* 4 Wall. 2, that the Constitution and the Bill of Rights are not suspended during time of war, and that Congress has not the power, under any conditions short of a complete breakdown of the judicial system and actual armed conflict in the territory affected, to deprive any citizen of any constitutional right other than the limited deprivation of the Writ of Habeas Corpus.

> "Time has proven the discernment of our ancestors; for even these provisions, expressed in such plain English words, that it would seem the ingenuity of man could not evade them, are now, after the lapse of more than seventy years, sought to be avoided. Those great and good men foresaw that troublous times would arise, when rulers and people would become restive under restraint, and seek by sharp and decisive measures to accomplish ends deemed just and proper; and that the principles of constitutional liberty would be in peril, unless established by irrepealable law. The history of the world had taught them that what was done in the past might be attempted in the future. The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times and under all circumstances. No doctrine, involving more pernicious consequences, was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy or despotism, but the theory of necessity on which it is based is false; for the government,

within the Constitution, has all the powers granted to it which are necessary to preserve its existence, as has been happily proved by the result of the great effort to throw off its just authority.

* * * * * * * *

"This nation, as experience has proved, cannot always remain at peace, and has no right to expect that it will always have wise and humane rulers, sincerely attached to the principles of the Constitution. Wicked men, ambitious of power, with hatred of liberty and contempt of law, may fill the place once occupied by Washington and Lincoln; and if this right is conceded, and the calamities of war again befall us, the dangers to human liberty are frightful to contemplate. If our fathers had failed to provide for just such a contingency, they would have been false to the trust reposed in them. They knew—the history of the world told them—the nation they were founding, be its existence short or long, would be involved in war; how often or how long continued, human foresight could not tell; and that unlimited power, wherever lodged at such a time, was especially hazardous to free men. For this, and other equally weighty reasons, they secured the inheritance they had fought to maintain, by incorporating in a written Constitution the safeguards which time had proved were essential to its preservation. Not one of these safeguards can the President or Congress or the Judiciary disturb, except the one concerning the writ of habeas corpus."

Ex parte Milligan, 4 Wall. 2, 18 L. Ed. 281 (pages 295 and 297).

AN EX PARTE JUDGMENT ON DECLARATION OF TAKING IS NOT APPEALABLE.

Appellee joins appellant in its able argument that the judgment on the declaration of taking was not appealable, and is not *res judicata* upon the right of the United States to acquire the property. The judgment was *ex parte*. To hold this judgment appealable would be to force the owner whose land was summarily taken to stand upon the bare record presented by the government in obtaining the order. On such appeal no facts would be before this court except such as appear in the declaration of taking, the *ex parte* judgment and the complaint, notwithstanding at a trial on the merits evidence might not be found to support those recitals. That such an order is interlocutory and that an appeal cannot be taken from it was held in:

Luxton v. North River Bridge Co., 147 U. S. 337, 341 (1893);

Southern Ry. Co. v. Postal Telegraph Co., 179 U. S. 641, 643 (1901);

Grays Harbor Co. v. Coats-Fordney Co., 243 U. S. 251, 256 (1917);

Wick v. Superior Court, 278 U. S. 575 (1928);

Dieckmann v. United States, 88 F. (2d) 902 (C.C.A. 7, 1937).

The two cases which throw some cloud upon the foregoing rule are *Oakland v. United States,* 124 F. (2d) 959, and *Puerto Rico Railway Light and Power Company v. United States,* 131 F. (2d) 491. These cases are referred to hereafter as the *Oakland* case and the *Puerto Rico* case, respectively.

By entertaining the appeal in the *Oakland* case this Circuit Court impliedly held that an appeal could be taken. But in that case a motion was made to set aside the judgment on declaration of taking. The appeal was from the order denying the motion. Thus, a hearing had been had at which each party had an opportunity to present his case.

In the *Puerto Rico* case the judgment on declaration of taking was made *ex parte* and was vacated on motion. A new petition for a judgment on declaration of taking was made and a demurrer to that petition was filed and argued. A new judgment on declaration of taking was thereafter made and the appeal was taken from the new judgment. The jurisdiction of the court to hear this appeal was expressly upheld. Here, again, each party had an opportunity to be heard.

In no case has an appeal from the final judgment been denied because it should have been taken from the *ex parte* judgment on declaration of taking. The language of the decisions and their ultimate holding can be reconciled only by the application of the rule that a motion may be made to vacate the judgment on declaration of taking or the judgment may be made after a hearing. In either case the aggrieved party who has had his hearing may take an appeal from the judgment with which he is dissatisfied. But his rights are not precluded by an appeal from an *ex parte* judgment against him. He may, if he chooses, sit back until the time of trial. An appeal from the final judgment fixing the amount due upon the taking raises the question of the right of the government to take in the

first instance, i.e. whether the taking is for a public use.

> "It is well established that in considering the application of the 14th Amendment to cases of expropriation of private property, the question what is a public use is a judicial one. In deciding such a question, the court has appropriate regard to the diversity of local conditions and considers with great respect legislative declarations and in particular the judgments of state courts as to the uses considered to be public in the light of local exigencies. But the question remains a judicial one which this court must decide in performing its duty of enforcing the provisions of the Federal Constitution."
>
> *Cincinnati v. Vester,* 281 U. S. 439, 74 L. Ed. 950, at page 955.

CONCLUSION.

It is respectfully submitted that the use for which the property is sought to be taken is for the sole benefit of American Forge Company and no other member of the public can possibly benefit unless American Forge Company thereafter uses the property for the public benefit, which, from all that appears in the complaint, it is not required to do. Should it refuse to so use the property before the United States passes title to it, under the present complaint the United States can use appellee's land for no other purpose. Since, in the ultimate, whether the use is public is a judicial question, it is submitted that this court should sustain the United States District Court

in its dismissal of this action because the use for which this property is taken is a private, not a public, use.

Dated, Berkeley, California,
May 5, 1943.

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